



# City of Tukwila Transportation and Infrastructure Committee

- ❖ Cynthia Delostrinos Johnson, Chair
- ❖ Verna Seal
- ❖ Kate Kruller

<b>Distribution:</b> C. Delostrinos Johnson (email) V. Seal K. Kruller K. Hougardy(email) D. Quinn L. Humphrey H. Ponnekanti G. Labanara B. Still (email)	City Attorney (email) A. Youn Clerk File Copy  Place pkt pdf on SharePoint Z Trans & Infra Agendas  email cover to: F. Ayala, A. Le, C. O'Flaherty, A. Youn, B. Saxton, S. Norris, L. Humphrey
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## AGENDA

**MONDAY, NOVEMBER 16, 2020 – 5:30 PM**

**Virtual Meeting - Members of the public may listen by dialing 1-253-292-9750 and entering conference ID 393 337 832# (6300 BUILDING, SUITE 100)**

Item	Recommended Action	Page
<b>1. PRESENTATIONS</b>		
<b>2. BUSINESS AGENDA</b>		
a) Andover Park East Water Main Pavement Repair Bid Award (Scott Bates)	a) Forward same night to 11/16/2020 Regular New Business	Pg. 1
b) East Marginal Way South Stormwater Outfalls Consultant Agreement (Ryan Larson)	b) Forward to 11/23/20 Special Consent Agenda	Pg. 5
c) 2020/2021 Annual Small Drainage Programs Contract 20-029, Amendment 2 (Ryan Larson)	c) Forward to 12/07/20 Regular Consent Agenda	Pg. 23
d) Ordinance - Extenet Systems Franchise Agreement (Eric Compton)	d) Forward to the 12/07/20 Regular Consent Agenda	Pg. 41
e) Zayo Telecommunications Asset Sharing Agreement (Eric Compton)	e) Forward to 11/23/20 Special Consent Agenda	Pg. 65
f) TIC Committee Work Plan	f) Committee discussion	Pg. 81
<b>3. MISCELLANEOUS</b>		
53 <sup>rd</sup> Ave S Traffic Revision	<b>Future Agendas:</b>	

**Next Scheduled Meeting:** Monday, December 7, 2020 (*last meeting of 2020*)





## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Committee**  
 FROM: **Hari Ponnekanti, Interim Public Works Director**  
 BY: **Scott Bates, Traffic Engineering Project Manager**  
 CC: **Mayor Ekberg**  
 DATE: **November 13, 2020**  
 SUBJECT: **Water Fund - Andover Park East Water Main Pavement Repair Project**  
**Project No. 92040102**  
**Bid Award**

### **ISSUE**

Award the bid for construction of the Andover Park East Water Main Pavement Repair Project.

### **BACKGROUND**

On June 17, 2020, the City’s 10” water main failed at 455 Andover Park East causing damage to the roadway and area driveways.

### **ANALYSIS**

A call for bids was advertised for the Andover Park East Water Main Pavement Repair Project on October 20 and 27, 2020. Seven bids were opened on November 3, 2020. The confirmed lowest bidder was ICON Materials with a bid of \$141,546.00. The Engineer’s Estimate was \$143,155.00. There were no bidding errors.

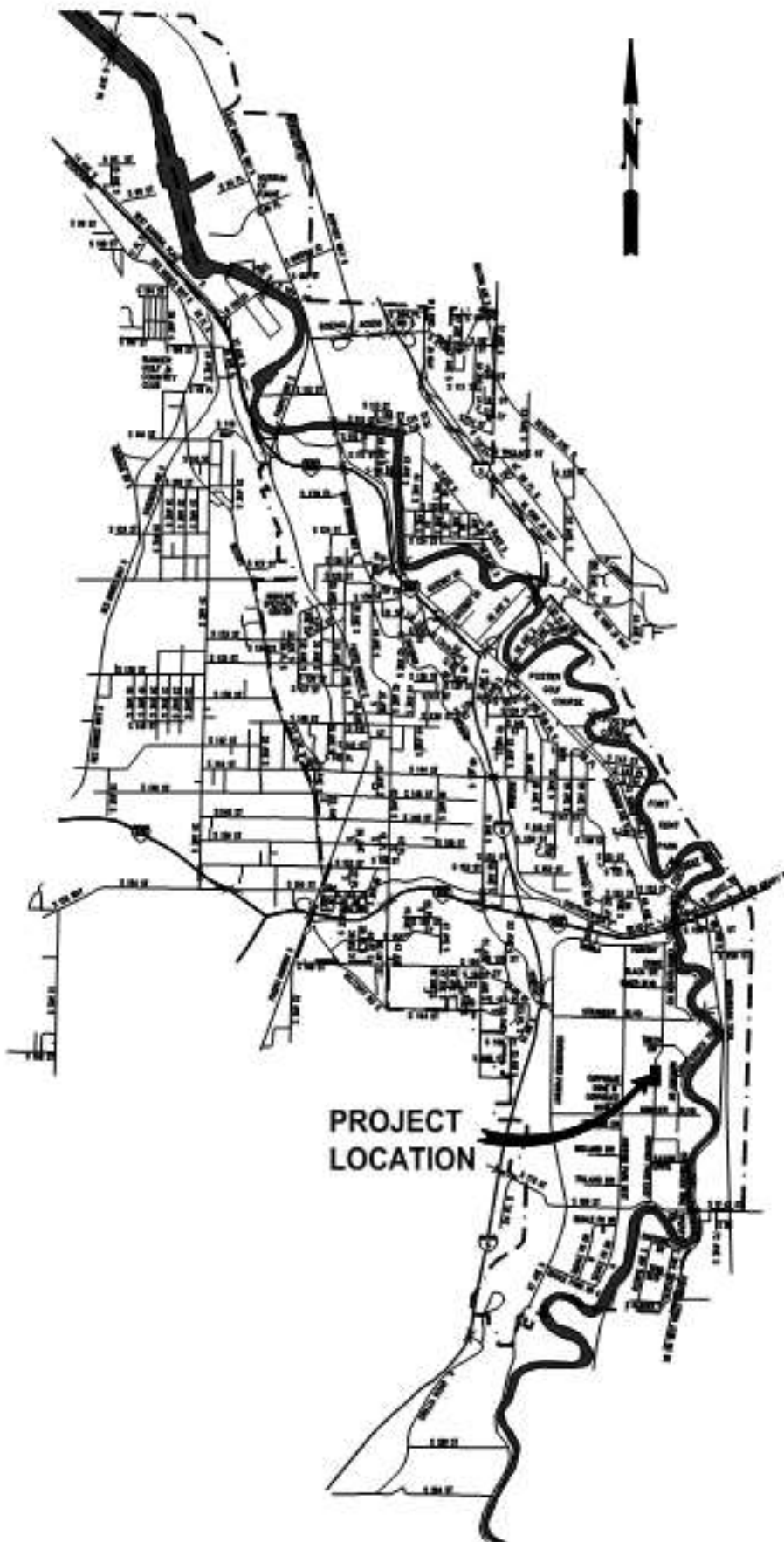
### **FINANCIAL IMPACT AND BID SUMMARY** (All amounts include sales tax)

	<b><u>Bid Amount</u></b>	<b><u>Engineer’s Estimate</u></b>	<b><u>Water Fund Budget</u></b>
ICON Materials	<b><u>\$141,546.00</u></b>		
Contingency 10%	<b><u>14,154.60</u></b>		
Total	<b><u>\$155,700.60</u></b>	<b><u>\$143,155.00</u></b>	<b><u>\$155,700.60</u></b>

### **RECOMMENDATION**

Council is being asked to award construction of the Andover Park East Water Main Pavement Repair Project to Icon Materials for a total contract amount of \$141,546.00 and to consider this item that same night under New Business at the November 16, 2020 Regular Meeting.

Attachments: Vicinity Map  
Award recommendation letter  
Bid Tabulation



November 04, 2020

Scott Bates  
City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

RE: Andover Park East Water Main Pavement Repair [Project No. 92040102]

Dear Mr. Bates,

As requested, KPG has completed the verification for Icon Materials for the Andover Park East Water Main Pavement Repair for their bid in the amount of \$141,546.00.

We have also checked the status of Icon Materials on the Washington State Labor and Industries web page to confirm they are currently insured, bonded, and licensed. Additionally, no strikes or debarment records arose federally or statewide regarding Icon Materials.

It is KPG's recommendation that the Andover Park East Water Main Pavement Repair be awarded to Icon Materials.

We have enclosed the contractor verification package for your review.

Sincerely,  
KPG, Inc.



Bryce Corrigan, P.E.

cc:

Enclosures: Icon Materials Verification Package

**CITY OF TUKWILA**  
**DEPARTMENT OF PUBLIC WORKS**  
**Andover Park East Water Main Pavement Repair**  
**BID TABULATION**  
 Tukwila Project # 92040102  
 November 04, 2020

Apparent Low Bid



No.	Section No.	Item	Qty	Unit	Engineer's Estimate		Icon Materials		RW Scott Construction Co		Puget Paving		NPM Construction Co		Northwest Asphalt		Miles Resources		Lakeside Industries	
					Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
<b>ROADWAY</b>																				
1	1-04	Unexpected Site Changes	1	FA	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
2	1-07	SPCC Plan	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 107.00	\$ 107.00	\$ 250.00	\$ 250.00	\$ 237.52	\$ 237.52	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
3	1-07	Mobilization	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 12,021.00	\$ 12,021.00	\$ 13,000.00	\$ 13,000.00	\$ 14,398.17	\$ 14,398.17	\$ 17,640.00	\$ 17,640.00	\$ 12,000.00	\$ 12,000.00	\$ 9,100.00	\$ 9,100.00	\$ 32,000.00	\$ 32,000.00
4	1-10	Project Temporary Traffic Control	1	LS	\$ 12,000.00	\$ 12,000.00	\$ 20,750.00	\$ 20,750.00	\$ 7,500.00	\$ 7,500.00	\$ 13,695.67	\$ 13,695.67	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 22,533.00	\$ 22,533.00	\$ 30,000.00	\$ 30,000.00
5	2-02	Cement Conc. Sidewalk and Driveway Removal Incl. Haul	100	SY	\$ 60.00	\$ 6,000.00	\$ 43.00	\$ 4,300.00	\$ 25.00	\$ 2,500.00	\$ 65.71	\$ 6,571.00	\$ 65.00	\$ 6,500.00	\$ 35.00	\$ 3,500.00	\$ 59.60	\$ 5,960.00	\$ 25.00	\$ 2,500.00
6	2-02	Cement Conc. Curb Removal Incl. Haul	130	LF	\$ 25.00	\$ 3,250.00	\$ 13.50	\$ 1,755.00	\$ 15.00	\$ 1,950.00	\$ 30.81	\$ 4,005.30	\$ 28.00	\$ 3,640.00	\$ 22.00	\$ 2,860.00	\$ 20.75	\$ 2,697.50	\$ 20.00	\$ 2,600.00
7	2-02	Roadway Excavation Incl. Haul	330	CY	\$ 48.00	\$ 15,840.00	\$ 58.00	\$ 19,140.00	\$ 40.00	\$ 13,200.00	\$ 40.82	\$ 13,470.60	\$ 72.00	\$ 23,760.00	\$ 104.00	\$ 34,320.00	\$ 52.70	\$ 17,391.00	\$ 50.00	\$ 16,500.00
8	2-03	Unresaltable Foundation Excavation Incl. Haul	60	CY	\$ 80.00	\$ 4,800.00	\$ 109.00	\$ 6,540.00	\$ 50.00	\$ 3,000.00	\$ 99.59	\$ 5,975.40	\$ 72.00	\$ 4,320.00	\$ 130.00	\$ 7,800.00	\$ 38.20	\$ 2,052.00	\$ 50.00	\$ 3,000.00
9	4-04	Crushed Surfacing Base Course	380	TON	\$ 45.00	\$ 17,100.00	\$ 20.00	\$ 7,600.00	\$ 35.00	\$ 13,300.00	\$ 22.93	\$ 8,713.40	\$ 58.00	\$ 22,040.00	\$ 40.00	\$ 15,200.00	\$ 41.60	\$ 15,808.00	\$ 25.00	\$ 9,500.00
10	5-04	HMA Cl. 1/2" PG 58H-22	470	TON	\$ 110.00	\$ 51,700.00	\$ 95.50	\$ 44,885.00	\$ 175.00	\$ 82,250.00	\$ 115.63	\$ 54,346.10	\$ 180.00	\$ 75,200.00	\$ 164.00	\$ 77,080.00	\$ 128.25	\$ 60,277.50	\$ 110.00	\$ 51,700.00
11	7-12	Adjust Sewer Manhole	1	EA	\$ 500.00	\$ 500.00	\$ 447.00	\$ 447.00	\$ 1,000.00	\$ 1,000.00	\$ 1,707.38	\$ 1,707.38	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00	\$ 1,710.00	\$ 1,710.00	\$ 1,150.00	\$ 1,150.00
12	8-01	Inlet Protection	3	EA	\$ 80.00	\$ 240.00	\$ 26.00	\$ 78.00	\$ 70.00	\$ 210.00	\$ 68.48	\$ 205.44	\$ 100.00	\$ 300.00	\$ 100.00	\$ 300.00	\$ 90.00	\$ 270.00	\$ 25.00	\$ 75.00
13	8-04	Reinforced Cement Conc. Curb and Gutter	130	LF	\$ 50.00	\$ 6,500.00	\$ 43.00	\$ 5,590.00	\$ 50.00	\$ 6,500.00	\$ 103.92	\$ 13,509.60	\$ 45.00	\$ 5,850.00	\$ 30.00	\$ 3,900.00	\$ 44.80	\$ 5,824.00	\$ 45.00	\$ 5,850.00
14	8-13	Remove and Replace Monument Case and Cover	1	EA	\$ 1,000.00	\$ 1,000.00	\$ 2,780.00	\$ 2,780.00	\$ 2,500.00	\$ 2,500.00	\$ 2,672.11	\$ 2,672.11	\$ 2,000.00	\$ 2,000.00	\$ 1,800.00	\$ 1,800.00	\$ 684.50	\$ 684.50	\$ 1,000.00	\$ 1,000.00
15	8-06	Cement Conc. Driveway Entrance	80	SY	\$ 80.00	\$ 6,400.00	\$ 80.25	\$ 6,420.00	\$ 85.00	\$ 6,800.00	\$ 71.26	\$ 5,700.80	\$ 95.00	\$ 7,600.00	\$ 134.00	\$ 10,720.00	\$ 72.00	\$ 5,760.00	\$ 70.00	\$ 5,600.00
<b>SIDEWALK</b>																				
16	8-14	Cement Conc. Sidewalk	30	SY	\$ 65.00	\$ 1,950.00	\$ 69.55	\$ 2,086.50	\$ 70.00	\$ 2,100.00	\$ 47.50	\$ 1,425.00	\$ 115.00	\$ 3,450.00	\$ 178.00	\$ 5,340.00	\$ 53.90	\$ 1,617.00	\$ 50.00	\$ 1,500.00
<b>TRAFFIC CONTROL DEVICES</b>																				
17	8-09	Raised Pavement Marker Type 1	100	EA	\$ 4.00	\$ 400.00	\$ 8.56	\$ 856.00	\$ 8.50	\$ 850.00	\$ 8.91	\$ 891.00	\$ 12.00	\$ 1,200.00	\$ 10.00	\$ 1,000.00	\$ 9.13	\$ 913.00	\$ 8.00	\$ 800.00
18	8-09	Raised Pavement Marker Type 2	25	EA	\$ 8.00	\$ 200.00	\$ 12.84	\$ 321.00	\$ 13.00	\$ 325.00	\$ 11.88	\$ 297.00	\$ 20.00	\$ 500.00	\$ 10.00	\$ 250.00	\$ 13.75	\$ 343.75	\$ 12.00	\$ 300.00
19	8-22	Paint Line	70	LF	\$ 2.50	\$ 175.00	\$ 3.25	\$ 227.50	\$ 3.20	\$ 224.00	\$ 3.94	\$ 275.80	\$ 5.00	\$ 350.00	\$ 6.00	\$ 420.00	\$ 3.45	\$ 241.50	\$ 3.00	\$ 210.00
20	8-22	Plastic Traffic Arrow	3	EA	\$ 100.00	\$ 300.00	\$ 214.00	\$ 642.00	\$ 215.00	\$ 645.00	\$ 296.90	\$ 890.70	\$ 250.00	\$ 750.00	\$ 500.00	\$ 1,500.00	\$ 228.00	\$ 684.00	\$ 200.00	\$ 600.00
					<b>TOTAL ESTIMATE</b>	<b>\$ 143,155.00</b>	<b>TOTAL BID</b>	<b>\$ 141,546.00</b>	<b>TOTAL BID</b>	<b>\$ 163,104.00</b>	<b>TOTAL BID</b>	<b>\$ 153,827.99</b>	<b>TOTAL BID</b>	<b>\$ 194,100.00</b>	<b>TOTAL BID</b>	<b>\$ 197,490.00</b>	<b>TOTAL BID</b>	<b>\$ 158,968.75</b>	<b>TOTAL BID</b>	<b>\$ 170,885.00</b>

Proposal \$ 147,117.10



## **INFORMATIONAL MEMORANDUM**

TO: **Transportation and Infrastructure Committee**  
FROM: **Hari Ponnekanti, Interim Public Works Director**  
BY: **Ryan Larson, Senior Program Manager**  
CC: **Mayor Ekberg**  
DATE: **November 13, 2020**  
SUBJECT: **Surface Water Fund - East Marginal Way South Stormwater Outfalls**  
**Project No. 91041204**  
**Consultant Agreement**

### **ISSUE**

Approve a Consultant Agreement with KPG for final design and construction management services.

### **BACKGROUND**

A construction contract was awarded to Marshbank Construction, Inc. for construction of drainage improvements along the northern portion of East Marginal Way South. This project will reestablish a drainage connection to the Duwamish River and will add water quality treatment for a portion of East Marginal Way S. Construction is anticipated to begin in December 2020.

A consultant agreement was executed with KPG for design and construction management of this project under Contract No. 14-010 for \$403,101.72. This contract inadvertently expired on July 31, 2020 prior to it being extended.

### **DISCUSSION**

A new consultant contract is necessary to provide construction engineering and final design following the expiration of Contract No. 14-010. This new contract has a nearly identical scope and fee as the previous contracted work with the only change being a new completion date and a provision to pay for consultant expenses for work on scope items that occurred after the expiration of the previous contract.

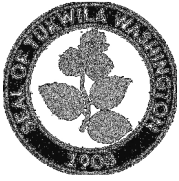
### **FISCAL IMPACT**

Budget remains to complete this project and no additional costs are anticipated at this time. KPG has expended \$203,125.74 of Contract No. 14-010, leaving a balance of \$179,978.98. KPG has prepared the attached contract, scope of work, and fee to complete the design and provide the necessary construction management services. The proposed contract amount for this work is \$179,978.98.

### **RECOMMENDATION**

Council is being asked to authorize the Mayor to execute a consultant agreement for design and construction management services with KPG Inc. in the amount of \$179,978.98 for the East Marginal Way Stormwater Outfall Project and consider this item on the Consent Agenda at the November 23, 2020 Special Meeting.

Attachment: KPG Consultant Agreement and Scope of Work



**CONSULTANT AGREEMENT FOR  
ENGINEERING SERVICES**

**THIS AGREEMENT** is entered into between the City of Tukwila, Washington, hereinafter referred to as “the City”, and KPG, Inc., hereinafter referred to as “the Consultant”, in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** The Consultant is retained by the City to perform engineering services in connection with the project titled ‘East Marginal Way South Stormwater Outfalls Project’.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit “A” attached hereto, including the provision of all labor, materials, equipment and supplies.
3. **Duration of Agreement; Time for Performance.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2021, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than December 31, 2021 unless an extension of such time is granted in writing by the City.
4. **Payment.** The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:
  - A. Payment for the work provided by the Consultant shall be made as provided on Exhibit “B” attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$179,978.98 without express written modification of the Agreement signed by the City.
  - B. The Consultant may submit vouchers to the City once per month during the progress of the work for partial payment for that portion of the project completed to date. Such vouchers will be checked by the City and, upon approval thereof, payment shall be made to the Consultant in the amount approved.
  - C. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.
  - D. Payment as provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - E. The Consultant’s records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City and the state of Washington for a period of three (3) years after final payments. Copies shall be made available upon request.



5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the City on any project other than the project specified in this Agreement.
6. **Compliance with Laws.** The Consultant shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services rendered under this Agreement.
7. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. **Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. **Minimum Amounts and Scope of Insurance.** Consultant shall obtain insurance of the types and with the limits described below:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
  3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
  4. Professional Liability with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Professional Liability insurance shall be appropriate to the Consultant's profession.
- B. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not be contributed or combined with it.
- C. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- D. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. Certificates of coverage and endorsements as required by this section shall be delivered to the City within fifteen (15) days of execution of this Agreement.
- E. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- F. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.
9. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.

10. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the City shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. **Discrimination Prohibited.** The Consultant, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation or the presence of any disability in the selection and retention of employees or procurement of materials or supplies.
12. **Assignment.** The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the City.
13. **Non-Waiver.** Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.
14. **Termination.**
  - A. The City reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Consultant.
  - B. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the City, if the City so chooses.
15. **Applicable Law; Venue; Attorney's Fees.** This Agreement shall be subject to, and the Consultant shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Tukwila Municipal Code and ordinances of the City of Tukwila. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit. Venue for any action arising from or related to this Agreement shall be exclusively in King County Superior Court.
16. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.

17. **Notices.** Notices to the City of Tukwila shall be sent to the following address:

City Clerk  
City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

Notices to Consultant shall be sent to the following address:

KPG  
3131 Elliott Ave, Suite 400  
Seattle, WA 98121

18. **Entire Agreement; Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF TUKWILA

CONSULTANT

\_\_\_\_\_  
Mayor, Allan Ekberg

By: \_\_\_\_\_

Printed Name: Nelson Davis, KPG

Title: Principal

Attest/Authenticated:

Approved as to Form:

\_\_\_\_\_  
City Clerk, Christy O'Flaherty

\_\_\_\_\_  
Office of the City Attorney

## **EXHIBIT A**

### **City of Tukwila**

#### **East Marginal Way South Stormwater Outfalls Project**

#### **Final Design and Construction Services**

#### **Scope of Work**

**November 03, 2020**

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This Contract is provided to complete work originally scoped under Supplement No. 6 for Contract 14-010. Contract completion was delayed as a result of grant funding delays by the Department of Ecology and inadvertently allowed to expire. This Contract provides for work performed within the original contract scope and budget between the previous contract expiration date of July 31, 2020 and contract completion.

Drainage from East Marginal Way South historically discharged through outfalls owned and operated by the Boeing Company, Jorgensen Forge, and two King County Airport storm systems. The Jorgensen Forge outfall was abandoned in 2012 under orders from the Department of Ecology (DOE) due to contaminants within the conveyance pipe and this East Marginal Way South discharge has been temporarily diverted to the King County Airport outfall.

Improvements are proposed to utilize the Boeing Z Line outfall in lieu of the King County Airport. This project will improve water quality in the Duwamish River through the installation of conveyance, stormwater treatment facilities, and permeable pavement, as well as lining a leaky storm pipe along East Marginal Way. The project will provide water quality treatment for total suspended solids (TSS) and will reduce groundwater contamination.

Under previous contract authorization, KPG prepared topographic survey, a pre-design report, limited environmental approvals, and preliminary design in the format required for the *2013-15 Municipal Stormwater Capacity Grant Program*. DOE has provided comments to this report and determined that the project remains eligible for final design and construction grant funds; however, these funds were put on hold in 2015 due to a lack of available funds. Funding was recently re-authorized by DOE to complete final design and construction.

This supplement is provided to complete environmental documentation, geotechnical analysis, final design, bid period services, and construction management in accordance with the attached scope of work and grant funding requirements.

## **TASK 1 – MANAGEMENT / COORDINATION / ADMINISTRATION**

- 1.1 The Consultant will provide continuous project management for the project duration (8 months for final design).
- 1.2 The Consultant shall prepare monthly progress reports identifying work in progress, upcoming work elements, and reporting of any delays, problems, or additional information needs. The monthly progress reports shall be submitted with invoices.

### Task 1 Deliverables:

- *Monthly progress reports during design period (8 months).*

## **TASK 2 – PERMITTING**

- 2.1 The Consultant shall prepare a draft and final SEPA checklist describing the project improvements for submittal and coordination by the City.
- 2.2 The Consultant shall prepare and submit an Inadvertent Discovery Plan (IDP) in accordance with DOE grant requirements. The IDP will be included as an appendix to the final project specifications.

### Task 2 Deliverables:

- *Draft and Final SEPA checklist, 2 paper copies and 1 pdf.*
- *IDP uploaded to DOE EAGL site for approval.*

### Task 2 Assumptions:

- *No other permits will be required.*
- *Previous EO 05-05 approval from DAHP remains valid.*
- *Fees, signage, and public notice of SEPA will be by the City.*

## **TASK 3 – GEOTECHNICAL EXPLORATION**

- 3.1 Previous geotechnical analysis by GeoDesign under subcontract to the Consultant will be utilized for final design. We have included a \$5,000 budget for final design support and to incorporate comments on the draft geotechnical report in order to prepare the final geotechnical report.

## **TASK 4 – UTILITY AND AGENCY COORDINATION**

- 4.1 Washington Department of Ecology: The Consultant shall prepare for and attend up to two (2) coordination meetings and provide necessary phone and email communication with DOE and the City for review and comment of the pre design and design submittal.

- 4.2 Boeing: The Consultant shall prepare for and attend up to two (2) coordination meetings with the City and Boeing to coordinate access and design information for work on Boeing property.
- 4.3 Private Utilities (gas, water, sewer, power, telephone, cable): The Consultant shall distribute design submittals to utility owners and identify and conflicts and potholing needs. Utility provided potholes shall be surveyed by the Consultant and incorporated into base maps.

Task 4 Deliverables:

- *Plan distribution to private utilities.*

Task 4 Assumptions:

- *Potholing of existing private utilities, if required, will be performed by the utility owner and is not included in this scope of work.*
- *No permits will be required by BNSF for work in the City right of way.*
- *Obtaining easements from Boeing is not included in this scope of work.*

## **TASK 5 – FINAL DESIGN**

The Consultant shall prepare Final Plans, Specifications and Estimates for review and approval by the City based on City and DOE comments received at the preliminary design submittal and DOE grant requirements. Plans shall be formatted to provide sufficient detail for convenient field layout of all proposed facilities. City standard details and WSDOT standard plans will be supplemented with project specific details as required.

- 5.1 The Consultant shall review and update previous design report and preliminary design based on comments received in 2015 from the City and DOE. Design Report and 90 percent plans, specifications, and estimate will be uploaded to the DOE EAGL site as required by the grant.
- 5.2 Respond to up to two (2) rounds of DOE comments in order to obtain DOE acceptance of the Design Report and 90% Plans.
- 5.3 The Consultant shall prepare draft Bid Plans for submittal to the City and upload to the DOE EAGL site as required by the grant. Mechanical and electrical support for stormwater pump station design will be provided by the City's proprietary pump system supplier, Calvert Technical Services, Inc. A \$5,000 allowance is provided for design review and input from Calvert Technical Services, Inc.
- 5.4 The Consultant will calculate quantities and prepare construction cost opinions in support of the 90% and Final Bid Plans and upload to DOE EAGL site as required by the grant.
- 5.5 The Consultant will prepare 90% and Final Bid Specifications for review and approval by the City and DOE. Specifications will be based on 2018 WSDOT Standard Specifications, using contract boilerplate and general special provisions provided by the City.
- 5.6 Prepare a preliminary Construction Schedule in accordance with DOE grant requirements and upload to EAGL site. The Construction Schedule will be used for determining contract working

days; however, the actual schedule and sequencing will be determined by the Contractor in accordance with Contract requirements.

- 5.7 Upload final Bid Documents to BXWA.com in .pdf format for bidding. The Consultant shall respond to bidder inquiries, prepare necessary addenda, attend bid opening, and prepare recommendation for award letter for City consideration.

Task 5 Deliverables:

90% and Bid Submittals

- One (1) ½-size unbound, seven (7) ½-size bound of the Construction plans. Upload to DOE EAGL site.
- One (1) hard copy, and two (2) electronic version (PDF and Excel) of the Engineer's Estimate of Probable Cost. Upload to DOE EAGL site.
- One (1) electronic version of the Special Provisions and seven (7) hard copies. Upload to DOE EAGL site.
- One (1) hard copy and .pdf with a summary of responses to the previous submittal. Upload to DOE EAGL site.
- One (1) hard copy and .pdf of preliminary construction schedule. Upload to DOE EAGL site.
- Addenda, Bid Tabulation, and Recommendation to either award or reject low bidder, .pdf.

Task 5 Assumptions:

- Topographic survey prepared under previous authorization will be used for final design.
- Scope of improvements for final design will be in general accordance with 2015 design report and preliminary design.

**TASK 6 – CONSTRUCTION PHASE SERVICES**

This work will provide construction management services for the construction contract. These services will include design support, project management, documentation control, inspection, materials testing, and contract administration during the construction of the project, as detailed below. The objective and purpose of this task is for the Consultant to successfully deliver the construction of the Project to the City by ensuring that the improvements are constructed in accordance with the approved Plans and Specifications, as may be amended or revised, that all of the required Project documentation is accounted for. The following general assumptions were used for developing this budget estimate:

**General Assumptions:**

- The **proposed project team** will include one part-time documentation control specialist, a part-time resident engineer during construction activities, a full-time inspector, sub-consultants to provide services for materials testing, and other supporting tasks as deemed necessary. It is anticipated that full- time site observation will be required for the entirety of the project.
- The level of service is based on a construction project duration of approximately **40 working**



**days.**

- KPG estimates a total project construction duration of 60 working days (12 weeks) including preconstruction service, construction services, and project closeout. No suspensions or stop work periods are anticipated during this duration; however, a procurement suspension may be considered prior to beginning construction if requested by the Contractor.
- It is anticipated that the KPG will develop the Record of Materials (ROM). This scope of services provides the management of the ROM and scheduling of required materials testing respectively.
- It is anticipated that the City will review and execute the insurance, bonds, and the Construction Contract.
- The design engineers from KPG will be available during construction to answer questions during construction and review RAM's, shop drawings, and answer RFI's that require a level of engineering expertise outside of the capabilities of the field personnel.
- Services will be performed in accordance with the Contract plans & special provisions, and City engineering standards.

6.1 Provide overall project management, coordination with the City, monthly progress reports, and invoicing during the construction phase. This effort will include the following elements.

- Organize and layout work for project staff. Prepare project instructions on contract administration procedures to be used during construction.
- Review monthly expenditures and CM team scope activities. Prepare and submit project progress letters to the City along with invoices describing CM services provided each month. Prepare and submit reporting required by funding source(s).

6.2 **Preconstruction Conference:** The Consultant will prepare an agenda for, distribute notices of, and conduct a preconstruction conference in the City's offices. The Consultant's project manager, resident engineer, inspector, and document control specialist will attend the preconstruction conference. The Consultant will prepare a written record of the meeting and distribute copies of the minutes to all attendees and affected agencies, staff, etc.

At the Pre-construction conference, the Consultant shall facilitate discussions with the Contractor concerning the plans, specifications, schedules, issues with utilities, unusual conditions, Federal, State, and local requirements and any other items that will result in better project understanding among the parties involved.

6.3 **Field Construction Services** shall include:

**A. On-site Observation:** The Consultant shall provide the services of one full time inspector during construction activities and other tasks necessary to monitor the progress of the work. Construction staff shall oversee the following items of work, on the project site, and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City:

Field inspection staff will perform the following duties as a matter of their daily activities:

- i. Observe technical conduct of the construction, including providing day-to-day contact with construction contractor, City, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.
- ii. Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes, and notify construction contractor of noncompliance. Advise the City of any non-conforming work observed during site visits.
- iii. Document all material delivered to the job site in accordance with the contract documents.
- iv. Prepare daily inspection reports, recording the construction contractor's operations as actually observed by the Consultant; includes quantities of work placed that day, contractor's equipment and crews, and other pertinent information.
- v. Interpret Contract Documents in coordination with the City and KPG.
- vi. Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.
- vii. Establish communications with adjacent property owners. Respond to questions from property owners and the general public.
- viii. Coordinate with permit holders on the Project to monitor compliance with approved permits, if applicable.
- ix. Prepare field records and documents to help assure the Project is administered in accordance with the funding requirements.
- x. Collect and calculate delivery tickets and salesman's daily reports of aggregate. All tickets will be initialed with correct bid item and stationing identified (Construction Manual 10-2).
- xi. Attend and actively participate in regular on-site weekly construction meetings.
- xii. Take periodic digital photographs during the course of construction, and record locations.
- xiii. Coordinate with the City's maintenance personnel.
- xiv. Punch list. Upon substantial completion of work, coordinate with the Client and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.

**B. Substantial Completion:** Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punchlist' of items to be completed. A punchlist and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City.

**C. Materials Testing:** Coordinate the work of the materials testing technicians and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and address deficiencies. Frequency of testing shall be determined by the resident engineer.

*Assumptions:*

- Consultant will provide observation services for the days/hours that the contractor's personnel are on-site.
- Consultant will provide qualified personnel for inspection of all bid item work.
- The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work, and pursue the other remedies in the interests of the City, as detailed in the Contract Documents. The Consultant cannot guarantee the construction contractors' performance, and it is understood that Consultant shall assume no responsibility for: proper construction means, methods, techniques; project site safety, safety precautions or programs; or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or City's expectations.

*Deliverables:*

- Daily Construction Reports with project photos – submitted on a weekly basis
- Punch List, Certificate of Substantial Completion
- Review test reports for compliance

**6.3 Office Construction Services** shall include:

- A. **Document Control.** Original documentation will be housed at the Consultant's office, and filed in accordance with standard filing protocol. A copy of working files will be maintained in the field office.
- Document Control consists of:
- Final Estimate (Approving Authority File)
  - Comparison of Preliminary and Final Quantities (Approving Authority File)
  - Final Records (Approving Authority File)
  - Record of Material Samples and Tests
  - Affidavit of Wages Paid
  - Release for the Protection of Property Owners and General Contractor
- B. **Project Coordination:** Liaison with City, construction contractor, engineer, utilities and property owners on a regular basis to discuss project issues and status.
- C. **Plan Interpretations:** Provide technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Coordinate with City for resolution of issues involving scope, schedule, and/or budget changes.
- D. **Weekly Meetings:** Lead weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.
- E. **Initial Schedule Review:** Perform detailed schedule review of contractor provided CPM for conformance with the contract documents.
- F. **Lump Sum Breakdown:** Evaluate construction contractors' Schedule of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are

made in accordance with the requirements of the Contract Documents. Lump Sum Breakdowns for payment each month will be calculated with detailed data.

- G. **Monthly Pay Requests:** Prepare monthly requests for payment, review with the City, contractor and approve as permitted. Utilize City provided format for pay estimates, or Consultant format.
- H. **Monthly Schedule Review:** At the monthly cutoff, review contractor's updated schedule and compare with field-observed progress, as described in Section 1-08 of the Special Provisions. In addition, perform schedule analysis on contractor provided CPM updates and review schedule for delays and impacts. Coordinate with Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within the Contractor's control or other events or issues beyond the Contractor's control.
- I. **Certified Payroll:** Process and track all certified payroll per State Prevailing Wage Requirements. This includes verifying the initial payroll for compliance and 10% of all payrolls submitted thereafter. Tracking payroll each week.
- J. **Weekly Statement of Working Days:** Prepare and issue weekly statement of working day report each week.
- K. **Subcontractor Documentation:** Process / Approve all required subcontractor documentation. Request to Sublets will be verified and logged. This includes checking System Award Management System (SAMS), verifying business licensing, reviewing insurance documentation, verifying city business licensing, Intent to Pay Prevailing Wage and Affidavit of Wages Paid. All subcontractor documentation will be logged into KPG's subcontractor logs.
- L. **Record Drawings:** Review record drawings prepared by the Contractor, and prepare a conformed set of project record drawings based on Contractor provided information and from inspection notes. Record drawings to be verified on a monthly basis, as part of the progress payment to the Contractor. Upon project completion, contractor provided markups will be verified for completeness and supplemented with inspection information. The Consultant will provide the marked up plan sheets with both the contractors and inspectors as-built information as well as CAD updates incorporating these markups.
- M. **Physical Completion Letter:** Following completion of all punchlist work, prepare physical completion letter to the contractor, and recommend that City and/or Utilities accept the project.
- N. **Project Closeout:** Transfer all project documents to the City for permanent storage.
  - Schedule review comments
  - As-built schedule
  - Meeting agendas and notes
  - Monthly Pay Estimates
  - Subcontractor Packets
  - Cost Projection
  - Physical Completion Letter
  - Final Project Documents

#### 6.4 Submittal and RFI processing

- A. **Submittals:** Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Key submittals to be transmitted to the City for their review and approval. Submittals shall be logged and tracked.

- B. **Request for Information (RFI):** Review and respond to RFI's. RFI's shall be logged and tracked.
- C. **Record of Materials (ROM):** Utilize ROM prepared by KPG and update based on Special Provisions and Plans for use on the project, based on the contract specifications. The ROM will be maintained by the Resident Engineer. The ROM will track all of the materials delivered to the site including manufacturer/supplier, approved RAM's, QPL items, material compliance documentation, and all other required documentation.

*Deliverables*

- Submittal log
- RFI Log
- Completed Record of Material for Material Certification

6.5 Change Management

- A. **Case Log:** Develop and maintain a case log which includes change orders, RFP's, Field Work Directives
- B. **Change Orders:** Develop change orders and provide technical assistance to negotiate change orders, and assist in resolution of disputes which may occur during the course of the project. Each change order will be executed in accordance with WSDOT Standard Specifications and contain the following:

- Change order
- Independent Cost Estimate
- Time Impact Analysis
- Contractor's Pricing
- Verbal Approval Memo
- Back up documentation

- C. **Field Work Directives:** Prepare field work directives as necessary to keep the contractor on schedule.
- D. **Minor Change Orders:** Develop minor change orders per WSDOT Standard Specifications. Each minor change order will be executed and contain the following:

- Independent Cost Estimate
- Verbal Approval Memo
- Back up documentation

- E. **Force Account:** Track contractor force account labor, equipment and materials. All force account calculations will be verified by the engineer and double checked by the documentation specialist.

*Deliverables*

- Change Order(s)
- Case Management Log
- RFI Log
- Minor Change Order(s)
- Force Account Records

**Additional Services**

The City may require additional services of the Consultant in order to advance the project corridor through final design, bidding and/or construction. This work may include items identified in the current task authorizations as well other items, which may include, but are not necessarily limited to the following:

- Right of way and easement research and/or acquisition
- Additional design or construction assistance

These services will be authorized under a future contract supplement if necessary. At the time these services are required, the Consultant shall provide a detailed scope of work and an estimate of costs. The Consultant shall not proceed with the work until the City has authorized the work and issued a notice to proceed.









# INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Committee**  
 FROM: **Hari Ponnekanti, Interim Public Works Director**  
 BY: **Ryan Larson, Senior Program Manager**  
 CC: **Allan Ekberg**  
 DATE: **November 13, 2020**  
 SUBJECT: **Surface Water Fund – 2020/2021 Annual Small Drainage Programs**  
**Project Number 92041201, Contract No. 20-029**  
**Amendment No. 2**

## ISSUE

Approve Amendment No. 2 to Contract No. 20-029 with KPG, Inc.

## BACKGROUND

The City entered into a consultant agreement with KPG, Inc. for design and permitting services for the 2020 Annual Small Drainage Program. This project was to design and construct improvements at up to six locations. Permitting was not completed in time to allow construction in 2020.

Contract No. 20-029 was amended with Amendment No. 1 in the amount of \$18,382.00 to cover the cost of additional soil testing at the request of the Department of Ecology and a recommended soils investigation at the site of a planned deep excavation.

## DISCUSSION

The proposed Amendment No. 2 to KPG’s Contract No. 20-029 will include design of an additional three sites (2021 sites) and construction management services. This will allow us to combine the construction projects originally scheduled in 2020 and add the three additional sites for all of them to be constructed in 2021. Initiating design work early will allow for the completion of design and permitting and advertise for construction in early 2021.

## FISCAL IMPACT

Amendment No. 2 is for \$248,966.00, bringing the total contract amount to \$359,820.00. Proposed funding is made up of \$160,000 in budgeted design and construction management funds from 2020 and \$200,000 in proposed design and construction management funding for 2021.

	<u>Agreement</u>	<u>2020 Budget</u>	<u>2021 Budget</u>
Original KPG Contract	\$ 92,472.00	\$ 80,000.00	
KPG Amendment No. 1	18,382.00		
<b>KPG Amendment No. 2</b>	<b><u>248,966.00</u></b>	<b><u>80,000.00</u></b>	<b><u>\$200,000.00</u></b>
	<b><u>\$359,820.00</u></b>	<b><u>\$160,000.00</u></b>	<b><u>\$200,000.00</u></b>

## RECOMMENDATION

Council is being asked to authorize the Mayor to approve Amendment No. 2 to Contract No. 20-029 with KPG, Inc. in the amount of \$248,966.00 for the 2020/2021 Small Drainage Project and consider this item on the Consent Agenda at the December 7, 2020 Regular Meeting.

Attachments: Proposed 2021 CIP, page 78  
KPG Supplemental Agreement No. 2

## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Annual Small Drainage Program

Project No. 9xx41201  
81241207

**DESCRIPTION:** Select, design, and construct small drainage projects throughout the City.

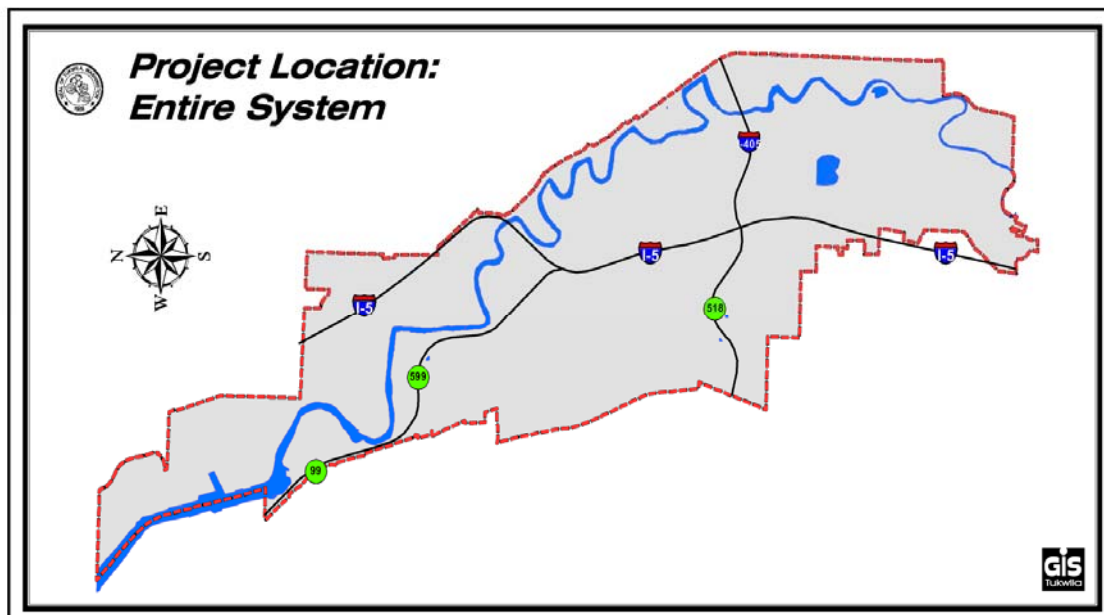
**JUSTIFICATION:** Provide drainage corrections for existing/ongoing drainage problems throughout the City, including culvert replacements, drain extensions, and pavement upgrades.

**STATUS:** Projects for this annual program are taken from Small Drainage Project List.

**MAINT. IMPACT:** Reduces maintenance.

**COMMENT:** Ongoing project, only one year shown in first column. Construction expenses may occur over two calendar years.

FINANCIAL (in \$000's)	Through Estimated		2021	2022	2023	2024	2025	2026	BEYOND	TOTAL
	2019	2020								
<b>EXPENSES</b>										
Design	74	92	100	100	100	100	110	110	80	866
Const. Mgmt.	40	68	100	100	100	100	110	110	80	808
Construction	108	515	700	700	700	700	750	750	513	5,436
<b>TOTAL EXPENSES</b>	<b>222</b>	<b>675</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>970</b>	<b>970</b>	<b>673</b>	<b>7,110</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Grant	65									65
Mitigation Actual										0
Mitigation Expected										0
Utility Revenue	157	675	900	900	900	900	970	970	673	7,045
<b>TOTAL SOURCES</b>	<b>222</b>	<b>675</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>970</b>	<b>970</b>	<b>673</b>	<b>7,110</b>





**CONTRACT FOR SERVICES**

**Amendment #2**

**Between the City of Tukwila and KPG, P.S.**

That portion of Contract No. 20-029 between the City of Tukwila and KPG, P.S. is hereby amended as follows:

**Article 2, Scope of Services**, shall be supplemented with the following:

*The Consultant agrees to provide design and construction services in accordance with the scope of work included as Exhibit A-1.*

**Article 3 - Duration of Agreement; Time for Performance** shall be modified as follows:

*This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2021, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than December 31, 2021 unless an extension of such time is granted in writing by the City.*

**Article 4, Payment**, shall be modified as follows:

*Payment for work provided by Consultant shall be made as provided on Exhibit B-1, attached hereto, provided that the total amount of payment to the Consultant for this work not exceed \$248,966.00 without express written modification of the Agreement signed by the City. The new total contract shall not exceed \$359,820.00 without express written modification of the Agreement signed by the City.*

All other provisions of the contract shall remain in full force and effect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF TUKWILA

CONTRACTOR

\_\_\_\_\_  
Allan Ekberg, Mayor

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

ATTEST/AUTHENTICATED

APPROVED AS TO FORM

\_\_\_\_\_  
Christy O’Flaherty, MMC, City Clerk

\_\_\_\_\_  
Office of the City Attorney

## EXHIBIT A-1

**Design Services  
Scope of Work  
October 2020  
City of Tukwila  
2020-2021 Small Drainage Program  
City Project Number: 92041201  
KPG Project Number: 20025**

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### PROJECT DESCRIPTION

The Consultant shall prepare final Plans, Specifications and Estimates for the 2020-2021 Small Drainage Program. The project will include the following sites:

Site 7: S 166<sup>th</sup> Ln @ 51<sup>st</sup> Ave S

*Install new storm drain structure at center of existing 12" Concrete pipe to provide access for City maintenance. In addition, install approximately 140 LF of 12" CIPP liner to correct root intrusion and minor damage that has been discovered through City Maintenance videos. Pipe repair locations will be identified and included in design improvements based on City provided video inspections. The existing termination catch basins structures will be inspected for any necessary repairs or upgrades.*

Site 8: Thorndyke CIPP

*Install approximately 280 LF of 24" CIPP liner to correct root intrusion and minor damage that has been discovered through City Maintenance videos. Pipe repair locations will be identified and included in design improvements based on City provided video inspections. Termination of point of conveyance run is located at the Thorndyke Elementary School. The other termination point is within existing City Easement.*

Sites 9: 49<sup>th</sup> Ave S from S 124<sup>th</sup> St to S 122<sup>nd</sup> St Drainage System

*Install storm drain system approximately 760 LF starting from the northside of S 124<sup>th</sup> St and traveling down 49<sup>th</sup> Ave S to tie-into the existing system along S 122<sup>nd</sup> St.*

The Consultant shall provide necessary surveying, project design, quantity and cost estimates, and utility coordination required to complete final bid documents. It is anticipated that sites will be bid as a single bid package along with up to six sites currently under design for the 2020-2021 Small Drainage Program as budget or other considerations allow.

The Consultant shall provide surveyed base maps with horizontal utility locations, or base maps created from field measurements, ortho-photography, and GIS data as necessary for each site as described below. If necessary, surveyed base maps will include right-of-way line work based on available public records. Project horizontal and vertical datum will be NAD83/2011 and NAVD88 respectively on all sites.

The Consultant shall prepare an easement document, legal description, and an exhibit for Site 7. The City will perform negotiations to obtain signature and record the easement.

It is the Consultants understanding that Sites 7,8&9 do not require SEPA checklist, HPA application, Special Permissions Permit, biological assessments, wetland delineations, detention facilities, or water

## EXHIBIT A-1

quality treatment facilities. The budget assumes a straightforward approval process with no special studies or extensive coordination.

It is the Consultants understanding that aside from the proposed Site 7 maintenance access easement, all work will be completed within City right of way, existing easements, and/or approved right of entry, and no further easement acquisition is anticipated.

It is the Consultants understanding that the City will secure right of entry and temporary access for work at Site 8 for entrance onto the Thorndyke Elementary School property. It is assumed this work will be completed during daytime working hours and a noise variance permit will not be required.

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### SCOPE OF WORK

#### TASK 1 – 2021 Small Drainage Program Design

##### 1.1 MANAGEMENT/COORDINATION/ADMINISTRATION

- The Consultant shall provide continuous project management and administration for the duration of the Project. (Estimate 8 months).
- Hold project coordination meetings with the City to update progress and review submittals. Assume (3) meetings.
- The Consultant shall provide monthly status reports and billings.
- The Consultant shall provide independent QA/QC reviews by senior in-house staff of all deliverables prior to submittal to the City.

1.2 The Consultant shall prepare a topographic base map along Site 7 where drainage structure will be installed and there is absence of City GIS data. Utility Locates will be called and marked and existing storm network mapped. Aerial base maps and City GIS data will be utilized for Site 8. The Consultant shall prepare a topographic base map for Site 9.

1.3 For Site 7, the Consultant shall prepare 50% and 90% plans for review and approval by the City.

1.4 For Site 7, based on approved 50% preliminary design layout, the Consultant shall prepare necessary easement and legal descriptions to acquire maintenance access to existing City utility easement. The City will review the project and easement needs to obtain approval from the property owner. The Consultant shall make necessary revisions to design based on easement conditions negotiated between the City and property owner and include the final design into the Bid Documents.

- *Deliverables*
  - Legal Description and figure(s) for City Maintenance Access Easement (assume four (4) private parcels.) (pdf).

1.5 For Site 8, the Consultant shall prepare 50% and 90% plans for review and approval by the City using aerial mapping and GIS data provided by the City. Each structure will be reviewed in the field to note general size, type, and depth of structures which will require access for CIPP lining. These

## EXHIBIT A-1

observations will be made from the surface, no survey or manned entry into drainage structures will be performed. The City shall provide video inspection for each pipe segment to receive CIPP lining.

- 1.6 For Site 9, the Consultant shall prepare 50% and 90% plans for review and approval by the City.
- 1.7 The Consultant shall prepare Contract Specifications per 2021 WSDOT Standard Specifications for the 90% Review Submittal and the Bid Documents.
- 1.8 The Consultant shall calculate quantities and prepare Engineers Estimate of Probable Construction Cost for each review submittal and the Bid Documents.
- 1.9 The Consultant shall distribute 50% review submittals to franchise utility owners to identify potential conflicts within the Project limits. The Consultant shall meet and coordinate with the franchise utilities with facilities located within the limits of the project. The coordination will include relocation of existing utilities. (estimate 2 meetings)
- 1.10 The Consultant shall prepare final Bid Documents for advertisement and award by the City for the proposed improvements including the following:
  - Plans shall be prepared with such provisions in such detail as to permit field layout and construction within a degree of accuracy acceptable to the City and per industry standards.
  - Details will be prepared for items not available as standard details from the City, State, or WSDOT standard drawings.
  - The plans shall illustrate complete details of construction of the proposed improvements including limits of construction and removals, proposed invert elevations, rim elevations and required construction materials.
  - Drainage designs will be determined through consultation with City staff and from previous experience rather than detailed basin modeling.
- 1.11 The Consultant shall provide bid period services to include responses to bidder inquiries, preparation of addenda (assume 2), attendance at bid opening, preparation of bid tabulation, and recommendation to award or reject the apparent low bidder. The budget assumes a straightforward review process with the low bidder receiving the contract award.
  - *Assumptions*
    - No federal funding is anticipated for the Project engineering or construction.
    - No utility upgrades are anticipated in the project design.
    - Drainage & Water Quality Reports will not be required.
    - Geotechnical Engineering services will not be required except as identified in Task 1.12.
    - Environmental Documentation will not be required.
    - Potholing of existing underground utilities will be performed by the utility owner.
    - All easement negotiations and approval from property owner will be through the City.
    - Any fees for BXWA.com will be paid by the City.

## EXHIBIT A-1

- *Deliverables*
  - 50% review submittal with Plans and Estimate (pdf).
  - 90% review submittal with Plans, Specifications, and Estimate (4 sets + pdf).
  - Bid Documents and Engineer's Estimate (6 sets ½ size plans, specs, and estimate)
  - Coordinate upload of Plans and Specifications to Builders Exchange.

1.12 The Consultant shall support a Geotechnical Subconsultant to perform a site reconnaissance to observe existing conditions and surficial indications of slope stability to support classification of the geologic hazards and to evaluate impacted of the proposed project on slope stability at the previously mapped 13601 40<sup>th</sup> Ave S Site referred to as (Site 1) in the original 2020 Small Drainage Program Contract. Per the City of Tukwila Municipal Code Chapter 18.45, the Subconsultant will review and provide recommendations to support the geologic critical areas assessment and geotechnical recommendations for pipe design and installation. In addition, the Subconsultant shall collect samples for characterization of arsenic and lead concentrations in surficial soil that has been impacted by the TSP.

- *Assumptions*
  - Project within Category 2 and 3 Soil Classification that requires Memo to satisfy City Municipal Code Requirements.
  - Project has anticipated tree removal that will require critical area assessment to satisfy City Requirements.
- *Deliverables*
  - Geotechnical memorandum summarizing the results of arsenic and lead testing. (pdf).
  - Draft and final report summarizing the results of subsurface explorations, a geologic critical areas assessment, and geotechnical recommendations to support design and construction of the new storm drainpipe. (pdf).

### **Additional Services**

The City of Tukwila may require other services of the consultant. These services could include additional design, right of way, utility potholing, environmental documentation, construction phase services, or other work tasks not included in the scope of work. At the time these services are required, the Consultant will provide the City with a detailed scope of work and an hour and fee estimate. The Consultant will not proceed with the work until the City has authorized the work and issued a Notice to Proceed.

**EXHIBIT A-1**

**Construction Management Services**

**Scope of Work**

**October 2020**

**City of Tukwila**

**2020-2021 Small Drainage Program**

**City Project Number: 92041201**

**KPG Project Number: 20025**

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KPG, P.S. (KPG) will provide construction management services for the construction contract to complete the City of Tukwila 2020-2021 Small Drainage Program project. The proposed work includes:

Site 1: 13601 40<sup>th</sup> Ave S Drainage System

*Replace and install new storm drain system approximately 90' of 18" CMP and 80' of 12" concrete pipe along with three drainage structures. Tie into the existing system at 40<sup>th</sup> Ave S. This site requires SEPA and City of Tukwila Special Permissions Permit with project limits within Type 3 Watercourse Buffer.*

Site 2: Klickitat Dr. @ 53<sup>rd</sup> Ave S Drainage System

*Replace and install new storm drain system approximately 180' of 18" CMP. Tie into the existing system along Klickitat Dr. This site requires HPA, SEPA and City of Tukwila Special Permissions Permit with project limits within Type 3 Watercourse Buffer.*

Site 3: S 124<sup>th</sup> St from 42<sup>nd</sup> Ave to 45<sup>th</sup> Ave Drainage System

*Install storm drain system approximately 750' on the northside of S 124<sup>th</sup> St. Tie into the existing system.*

Site 4: 57<sup>th</sup> Ave S @ Golden Nugget Drainage Structure

*Bring Type II Manhole up to grade by removing approximately 8' of existing 24" riser rings. Add 48" barrel sections and new manhole ring and cover.*

Site 5: 42<sup>nd</sup> Ave S Drainage Structure

*Install a new drainage structure with bird cage inlet to reduce plugging and overflows onto 42<sup>nd</sup> Ave S. This site requires an HPA and SEPA.*

Site 6: 48<sup>th</sup> Ave S from S 124<sup>th</sup> St to S 122<sup>nd</sup> St Drainage System

*Install storm drain system approximately 820' starting the northside of S 124<sup>th</sup> St and down 48<sup>th</sup> Ave S. Tie into the existing system along S 122<sup>nd</sup> St.*

Site 7: S 166<sup>th</sup> Ln @ 51<sup>st</sup> Ave S – Seatac, WA

*Install new storm drain structure at center of existing 12" Concrete pipe to provide access for City maintenance. In addition, install approximately 140' of 12" CIPP liner to correct root intrusion and minor damage that has been discovered through City Maintenance videos. Pipe repair locations will be identified and included in design improvements. The existing termination catch basins structures will be inspected for any necessary repairs or upgrades.*



## EXHIBIT A-1

Site 8: Thorndyke CIPP

*Install approximately 280' of 24" CIPP liner to correct root intrusion and minor damage that has been discovered through City Maintenance videos. Pipe repair locations will be identified and included in design improvements.*

Sites 9: 49<sup>th</sup> Ave S from S 124<sup>th</sup> St to S 122<sup>nd</sup> St Drainage System

*Install storm drain system approximately 760' starting from the northside of S 124<sup>th</sup> St and traveling down 49<sup>th</sup> Ave S to tie-into the existing system along S 122<sup>nd</sup> St.*

A detailed scope for the Contract follows:

### I. INTRODUCTION

The following scope of services and associated costs are based upon the assumptions outlined below.

#### General Assumptions:

- The level of service and fee is based on project duration of **90 working days**.
- The **proposed project team** will include a part time Resident Engineer (20 hours a week) from the Consultant for construction administration documentation and project support, one full time Construction Inspector, and certified payroll admin (4 hours a week), and one part time Project Engineer from KPG Design Team to review submittals and interpret Contractor inquiries as needed. The Team also includes sub-consultant to provide services for materials testing and construction site observation to satisfy Tukwila Municipal Codes for work within certain soil classifications.
- City will review and execute the insurance, bonds, and the Construction Contract.
- Consultant will coordinate during audits or traffic control operations related to project impacts and help the City to complete any other required correspondence with outside agencies.
- The City will work with the Contractor to conduct all community outreach in relation to phasing and direct impacts due to construction. The City's Contractor shall be responsible for the communication to the community on schedule and work activities.
- KPG design engineers will be available during construction to answer questions and review RAM's, shop drawings, and answer RFI's.
- Consultant services will be performed in accordance with the WSDOT Construction Manual, Contract plans & special provisions, and City of Tukwila engineering standards.
- The franchise Utilities will provide field inspection for all work surrounding the construction or relocation of their utility systems if necessary.
- Coordination of construction with franchise utilities, if any, will be done by City Contractor. Consultant will help facilitate coordination between utilities and Contractor as needed or requested by City.

## EXHIBIT A-1

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### II. SCOPE OF WORK

The objective and purpose of this Construction Management Services Agreement is for the Consultant to successfully deliver the construction of the Project to the City by ensuring that the improvements are constructed in accordance with the approved Plans and Specifications, as may be amended or revised, that all of the required Project documentation is accounted for, and ultimately that the City of Tukwila receives a successful review by any outside agency including state audits at the end of the Project.

#### TASK 1 – MANAGEMENT / COORDINATION /ADMINISTRATION

Provide overall project management, coordination with the City, monthly progress reports, and invoicing. This effort will include the following elements.

- 1.1 Organize and layout work for project staff. Prepare project instructions on contract administration procedures to be used during construction.
- 1.2 Review monthly expenditures and CM team scope activities. Prepare and submit monthly project progress reports to the City along with invoices describing CM services provided each month. Prepare and submit reporting required by funding source(s), if any.

#### Deliverables:

- Monthly invoices and progress reports

#### TASK 2 – PRECONSTRUCTION SERVICES

- 2.1 **Preconstruction Conference:** KPG will prepare an agenda for, distribute notices of, and conduct a preconstruction conference in the City's offices or via an on-line platform of the City's choice. The Consultant's team will attend the preconstruction conference. Pertinent City staff and private utilities will also be present at this meeting. KPG will prepare a written record of the meeting and distribute copies of the minutes to all attendees and affected agencies, staff, etc.

At the Pre-construction conference, the Consultant shall help facilitate discussions with the Contractor concerning the plans, specifications, schedules, pay estimate timelines and cutoff dates, issues with utilities, any unusual conditions, State and local requirements and any other items that will result in better project understanding among the parties involved.

- 2.2 **Preconstruction Photos:** KPG's inspector will arrive on site prior to City Contractor mobilizing on site to take preconstruction photographs for documentation of pre-existing conditions.
- 2.3 **Review Plans and Specs:** The Consultant team will familiarize themselves with all plans, specs, and City standards that will be incorporated into this project.
- 2.4 **Prepare Hard and Electronic Files:** The Consultant will prepare all electronic and hard copy files in preparation for the project. This includes pre-populating forms and pay estimate as coordinated with the City. SharePoint will not be utilized on this contract.

## EXHIBIT A-1

### Deliverables:

- Preconstruction conference meeting minutes
- Pre-construction Photos

### TASK 3 – CONSTRUCTION SERVICES - FIELD

**3.1 Construction Observation:** The Consultant will provide one (1) inspector during construction activities and other tasks necessary to monitor the progress of the work. The Inspector will ensure that the daily inspection reports and working days reporting are completed in a timely manner and contain sufficient information to assess whether the work is being conducted in compliance with the Contract Documents per City, WSDOT,. Consultant will make IDR's available to the City by Friday of the same work week upon request.

The Inspector may perform the following duties as a matter of his daily activities:

- Observe technical conduct of the construction, including providing day-to-day contact with construction contractor, City, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the WSDOT Standard Specifications.
- Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes, and notify construction contractor of noncompliance. Advise the City of any non-conforming work observed.
- Document all material delivered to the job site in accordance with the Contract Documents.
- Prepare daily inspection reports, recording the construction contractor's operations as actually observed by the Consultant; includes quantities of work placed that day, contractor's equipment and crews, and other pertinent information.
- Interpret Contract Documents in coordination with the City, Contractor, and KPG.
- Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.
- Support the Contractor's communication and responsibilities to answer questions from property owners and the general public as needed.
- Monitor compliance of approved permits per the project specifications, if applicable.
- Prepare field records and documents to ensure the Project is administered in accordance with the plans and specifications.
- Collect and calculate delivery tickets and scaleman's daily reports of aggregate. All tickets will be initialed with correct bid item and stationing identified (Construction Manual 10-2).
- Attend and actively participate in regular on-site weekly construction meetings.
- Take digital photographs during the course of construction, and record locations.
- Punch list. Upon substantial completion of work, coordinate with the Client and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.

## EXHIBIT A-1

### Assumptions:

- Consultant will provide observation services for the days/hours that the contractor's personnel are on-site.
- Assumption is Client's Contractor shall work normal 40-hour work weeks. For this project the "normal" work week may occur at night. KPG does not differentiate day shift from night shift. However, if the City's Contractor works a double shift (both day and night) within a single 24-hour period this will constitute two working days. Consultant's hours for inspection are based on one shift for number of working days allowed per Contract.
- Assumption is if Contractor is working at multiple sites within the City of Tukwila, the Consultant will split their time at the multiple locations and prioritize what location to be at for observation.
- The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work, and pursue the other remedies in the interests of the client, as detailed in the Contract Documents.

**3.2 Material Testing – Coordination & Tracking:** The inspector shall coordinate with the Contractor and the material testing firm to schedule testing of materials in the field to ensure they meet specifications per contract requirements..

**3.3 Substantial Completion:** Upon substantial completion of work, the Consultant shall issue a punch list and coordinate with the City's contractor to complete any deficiencies. Upon completion of the punch list work the Consultant will draft the Certificate of Substantial Completion for final review and issuance by the City.

### Deliverables:

- Daily Construction Reports with project photos
- Punch List – Consultant to issue punch list, City to Review
- Certificate of Substantial Completion – Consultant to draft, City to Issue
- Review test reports for compliance

### TASK 4 – CONSTRUCTION SERVICES – OFFICE

**4.1 Document Control.** Original documentation will be housed at the Consultant's office and filed in accordance with standard filing protocol. Document Control will consist of the following:

- Final Estimate
- Affidavit of Wages Paid
- Release for the Protection of Property Owners and General Contractor

## EXHIBIT A-1

- Certified Payroll (see 4.8 below).
- 4.2 Project Coordination:** Liaison with City, construction Contractor, engineer, utilities and property owners on a regular basis to discuss project issues and status.
- 4.3 Plan Interpretations:** Provide technical interpretations of the drawings, specifications, and Contract Documents, and evaluate requested deviations from the approved design or specifications. Coordinate with City for resolution of issues involving scope, schedule, and/or budget changes.
- 4.4 Weekly Meetings:** Consultant will lead weekly meetings. Consultant will prepare agenda for City review and distribute meeting minutes to attendees. Outstanding issues to be tracked on a weekly basis. Weekly Statement of Working Days will be reviewed/accepted by Contractor during the Weekly Meeting.
- 4.5 Schedule Review:** Consultant shall perform review of initial Contractor provided CPM for conformance with the Contract Documents. Any discrepancies, conflicts or unreasonable work durations will be brought to the attention of the Contractor and City. Consultant will provide one (1) intermediate review of Contractor's updated schedule and compare with field-observed progress and duration of the project.
- 4.6 Lump Sum Breakdown:** Consultant shall evaluate construction Contractors' Schedule of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Lump Sum Breakdowns for payment each month will be calculated.
- 4.7 Monthly Pay Requests:** Consultant shall prepare monthly requests for Contractor payment based on field note records prepared by Consultant field inspector in accordance with contract documents.
- 4.8 Certified Payroll:** The Consultant will process and check the Contractor and Subcontractor's certified payroll per State Prevailing Wage Requirements. Tracking of payroll shall consist of recording each payroll received from the Prime and Subcontractors and checking pay rates against Contract requirements. Any discrepancies will be brought to the Contractor and City.
- 4.9 Weekly Statement of Working Days:** Consultant shall prepare, and issue weekly statement of working day report each week to the Contractor and City for review and approval. Weekly statement of working days will be based on field inspection reports provided by Consultant.
- 4.10 Subcontractor Documentation:** Process / approve all required subcontractor documentation. Request to Sublets will be verified and logged. This includes checking System Award Management System (SAMS), verifying business licensing, reviewing insurance documentation, verifying city business licensing, Intent to Pay Prevailing Wage and Affidavit of Wages Paid. All subcontractor documentation will be logged into KPG's subcontractor logs.
- 4.11 Physical Completion Letter:** Following completion of all punch list work verified by the Consultant and any stakeholders required the Consultant shall prepare physical completion letter to the Contractor and the City shall issue the final contract voucher.

## EXHIBIT A-1

**4.12 Project Closeout:** Transfer all project documents to the City for permanent storage.

- Schedule review comments
- Meeting agendas and notes
- Monthly Pay Estimates
- Subcontractor Packets
- Physical Completion Letter
- Contractor submitted As-builts transcribed to CADD Bid Plans
- Final Project Documents

### TASK 5 – SUBMITTAL/RFI PROCESSING

**5.1 Submittals:** Consultant shall take lead on submittal reviews/ approvals. Consultant shall coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Submittals shall be logged and tracked by Consultant.

**5.2 Request for Information (RFI):** Consultant shall review and respond to RFI's. RFI's shall be logged and tracked by Consultant.

#### **Deliverables:**

- Submittal log
- RFI Log

### TASK 6 – CHANGE MANAGEMENT

**6.1 Change Orders:** The Consultant will develop change orders and the Consultant will provide technical assistance to negotiate change orders, and assist in resolution of disputes which may occur during the course of the project. The City will approve all change orders before being fully executed. Each change order will be executed in accordance with WSDOT Standard Specifications.

**6.2 Field Work Directives:** The Consultant will prepare field work directives as necessary to keep the Contractor on schedule.

**6.3 Force Account:** The Consultant will track Contractor force account labor, equipment and materials. All force account calculations will be verified by the City and double checked by the Consultant. The City shall have final authority to approve any Force Account work prior to agreement with the Contractor.

#### **Deliverables:**

## EXHIBIT A-1

- Change Order(s)
- Force Account Records

### TASK 7 – ADDITIONAL SERVICES

**7.1 Material Testing:** GeoDesign will be retained as our (KPG) subconsultant to provide material testing and construction observation services. All testing will be done in accordance with LAG Manual and WSDOT Construction Manual.

Additional services requested by the City will be performed only when authorized by the City. Authorization to perform additional services will be in writing, specifying the work to be performed, and basis of payment. Items such as Community Outreach (except as completed on a day to day basis by the inspector and resident engineer as described in task 3.1 – vii), Public Meetings, Ribbon Cutting Ceremony, claims analysis, surveying, services during shutdown periods of non-working days, and services for extended working days are examples of possible additional services. This fee is based 90 working day contract / 18 weeks, 8-hour days, additional extension of days will be approximately \$1,000.00 per day for one person. (8 hours x \$125.00 = \$1,000.00)

# EXHIBIT B-1

Client City of Tukwila  
 Project 2020-2021 Small Drainage Program  
 KPG PROJECT NUMBER: 20025 - Supplement 2  
 DATE: 10/30/2020

Task No.	Task Description	Labor Hour Estimate										Total Hours and Labor Fee Estimate by Task	
		Principal	Engineering Mgr	Sr. Engineer	Project Engineer	Project Surveyor	Design Engineer	Sr. Admin	Engineering Technician	Survey Crew II	Office Admin	Hours	Fee
			Sr. Const Mgr		Project Surveyor		Sr. CAD Technician		CAD Technician		Landscape Technician		
			Survey Mgr				Survey Technician						
		252	226	187	140	142	117	103	103	219	88		
<b>Task 1 - 2021 Small Drainage Program Design</b>													
1.1	Management / Coordination / Administration	4	2	4			4			8	22	\$ 3,324.00	
1.2	Survey & Base Maps		4			12		24			32	\$ 12,424.00	
1.3	Site 7 - S 166th Ln Design			2	32			20		16	70	\$ 8,842.00	
1.4	Site 7 - Access Easement & Legal Description				6			12			18	\$ 2,244.00	
1.5	Site 8 - Thorndyke CIPP Design			4	20			20		12	56	\$ 7,124.00	
1.6	Site 9 - 49th Ave S Drainage System Design			4	32			20		16	72	\$ 9,216.00	
1.7	Prepare Specifications		2	2	16			4			24	\$ 3,534.00	
1.8	Quantity and Cost Estimating		2	2	20			20		8	52	\$ 6,790.00	
1.9	Utility Coordination				12			6			18	\$ 2,382.00	
1.10	Prepare Bid Documents				20			16		8	44	\$ 5,496.00	
1.11	Bid Period Services				8						2	\$ 1,296.00	
1.12	Geotechnical Services Support (see subconsultants)				4						4	\$ 560.00	
	<b>Task Total</b>	<b>4</b>	<b>10</b>	<b>18</b>	<b>170</b>	<b>12</b>	<b>4</b>	<b>60</b>	<b>32</b>	<b>10</b>	<b>462</b>	<b>\$ 63,232.00</b>	
	<b>Total Labor Hours and Fee</b>	<b>4</b>	<b>10</b>	<b>18</b>	<b>170</b>	<b>12</b>	<b>4</b>	<b>60</b>	<b>32</b>	<b>10</b>	<b>462</b>	<b>\$ 63,232</b>	
<b>Subconsultants</b>													
												Geotechnical (GeoDesign) \$ 12,460.00	
												<b>Total Subconsultant Expense \$ 12,460.00</b>	
<b>Reimbursable Direct Non-Salary Costs</b>													
												Mileage at current IRS rate \$ 300.00	
												Utility Locate Service \$ 2,500.00	
												Title Reports for Site 8 \$ 2,000.00	
												Reproduction Allowance \$ 600.00	
												<b>Total Reimbursable Expense \$ 5,400.00</b>	
												<b>Total Estimated Budget \$ 81,092.00</b>	

EXHIBIT B-1



# EXHIBIT B-1

Client: City of Tukwila  
 Project: 2020-2021 Small Drainage Program  
 CITY PROJECT NUMBER: 92041201  
 KPG PROJECT NUMBER: 20025 Supplement #2  
 90 working days/ 18 weeks  
 DATE: 10/30/2020

Task No.	Task Description	Labor Hour Estimate								Total Hours and Labor Fee Estimate by Task	
		Principal	Construction Manager	Project Engineer	Project Landscape Architect	Resident Engineer	Construction Observer II	Construction Assistant	Senior Admin	Hours	Fee
		252	172	140	130	125	114	68	103		
<b>Task 1 - MANAGEMENT / COORDINATION / ADMINISTRATION</b>											
1.1	Project Management and Administrative Services		16						12	28	\$ 3,988.00
1.2	Prepare, review and submit monthly expenditures		12						12	24	\$ 3,300.00
	<b>Task Total</b>	<b>0</b>	<b>28</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>52</b>	<b>\$ 7,288.00</b>
<b>Task 2 - Preconstruction Services</b>											
2.1	Preconstruction Conference			2		4	4			10	\$ 1,236.00
2.2	Preconstruction Photos						8			8	\$ 912.00
2.3	Review Plans and Specs					8	8			16	\$ 1,912.00
2.4	Prepare Hard and Electronic Files					8				8	\$ 1,000.00
2.5	Prepare ROM					16				16	\$ 2,000.00
	<b>Task Total</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>36</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>58</b>	<b>\$ 7,060.00</b>
<b>Task3 - Construction Services - Field</b>											
3.1	Construction Observation (Upon authorization by City only)						684			684	\$ 77,976.00
3.2	Materials Testing - Coordination & Tracking Only					6	8			14	\$ 1,662.00
3.3	Substantial Completion					4	8			12	\$ 1,412.00
	<b>Task Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>700</b>	<b>0</b>	<b>0</b>	<b>710</b>	<b>\$ 81,050.00</b>
<b>Task 4 - Construction Services - Office</b>											
4.1	Document Control					16				16	\$ 2,000.00
4.2	Project Coordination					20				20	\$ 2,500.00
4.3	Plan Interpretations					8				8	\$ 1,000.00
4.4	Weekly Meetings (18 Weeks)					20				20	\$ 2,500.00
4.5	Schedule Review					8				8	\$ 1,000.00
4.6	Lump Sum Breakdown					8				8	\$ 1,000.00
4.7	Monthly Pay Requests					24				24	\$ 3,000.00
4.8	Certified Payroll							72		72	\$ 4,896.00
4.9	Weekly Statement of Working Days (18 Weeks)					16				16	\$ 2,000.00
4.10	SubContractor Documentation					16				16	\$ 2,000.00
4.11	Physical Completion Letter					2				2	\$ 250.00
4.12	Project Closeout			4		32				36	\$ 4,560.00
	<b>Task Total</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>170</b>	<b>0</b>	<b>72</b>	<b>0</b>	<b>246</b>	<b>\$ 26,706.00</b>
<b>Task 5 - Submittal/RFI Processing</b>											
5.1	Submittals			30	8	40				78	\$ 10,240.00
5.2	Request For Information (RFI)			14		32				46	\$ 5,960.00
5.3	Record of Materials (ROM)					40				40	\$ 5,000.00
	<b>Task Total</b>	<b>0</b>	<b>0</b>	<b>44</b>	<b>8</b>	<b>112</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>164</b>	<b>\$ 21,200.00</b>
<b>Task 6 - Change Management</b>											
6.1	Case Log					8				8	\$ 1,000.00
6.2	Change Orders			8		8				16	\$ 2,120.00
6.3	Field Work Directives (FWD)			8		6				14	\$ 1,870.00
6.4	Force Account					10				10	\$ 1,250.00
	<b>Task Total</b>	<b>0</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>32</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>48</b>	<b>\$ 6,240.00</b>

EXHIBIT B-1

# EXHIBIT B-1

<b>Total Labor Hours</b>	<b>0</b>	<b>28</b>	<b>66</b>	<b>8</b>	<b>360</b>	<b>720</b>	<b>72</b>	<b>24</b>	<b>1278</b>	
<b>Total Labor Fee</b>	<b>0</b>	<b>4,816</b>	<b>9,240</b>	<b>1,040</b>	<b>45,000</b>	<b>82,080</b>	<b>4,896</b>	<b>2,472</b>	<b>1,278</b>	<b>\$ 149,544.00</b>
<b>Task 7 - Additional Services</b>										
<b>Subconsultants</b>										
7.1	Materials Testing & Construction Observation - GeoDesign									\$ 16,230.00
										<b>Total Subconsultant Expense \$ 16,230.00</b>
<b>Reimbursable Direct Non-Salary Costs</b>										
										Mileage at current IRS rate \$ 1,500.00
										Office Supply Allowance \$ 600.00
										<b>Total Reimbursable Expense \$ 2,100.00</b>
										<b>Total Estimated Budget \$ 167,874.00</b>

EXHIBIT B-1



## **INFORMATIONAL MEMORANDUM**

**TO: Transportation and Infrastructure Committee**  
**FROM: Joseph Todd, Technology and Innovation Services Director**  
**BY: Eric Compton, Franchise and Technology Specialist**  
**CC: Mayor Ekberg**  
**DATE: November 13, 2020**  
**SUBJECT: Extenet Systems, Inc. Franchise Agreement**

### **ISSUE**

Approve an ordinance granting Extenet Systems, Inc a Franchise Agreement with an initial period of ten (10) years.

### **BACKGROUND**

State law provides cities the authority to establish franchises to telecommunication providers who wish to occupy city owned rights-of-way. Tukwila Municipal Code 11.32.060 requires all telecommunication providers to obtain franchise agreements with the City prior to approval to construct, maintain and operate within the City limits.

### **DISCUSSION**

Extenet is a partner for multiple wireless carriers in building out 5G/Small Cell facilities. Extenet does not have a network of their own and, as part of building the Small Cell facilities, will run fiber from the site to the partner carrier's fiber backbone or hub.

Extenet has also sought to partner with the City in asset sharing agreements which could provide additional sources of revenue or at least cost sharing/saving measures. A copy of their desired conduit in the City is attached.

### **FINANCIAL IMPACT**

Under the terms of the Franchise, Extenet is required to pay the City a \$5000 administrative fee. This fee has already been paid and processed by Finance.

Potential cost savings or small rental fees are possible with asset sharing as desired by Extenet.

### **RECOMMENDATION**

Council is being asked to approve the Ordinance allowing Extenet Systems, Inc. Franchise Agreement and consider this item on the Consent Agenda at the December 7, 2020 Regular Meeting.

### **ATTACHMENTS**

Draft Franchise Ordinance with Exhibit A  
Extenet Conduit Inquiry

**DRAFT**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO EXTENET SYSTEMS, INC., A DELAWARE CORPORATION, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, EXTENET Systems, Inc., a Delaware corporation, hereinafter referred to as "EXTENET" is a telecommunications company that, among other things, provides personal wireless services to customers in the Puget Sound region; and

**WHEREAS**, EXTENET's desired route through the City of Tukwila, hereinafter referred to as "City," requires the use of certain portions of City rights-of-way for the installation, operation and maintenance of a telecommunications system; and

**WHEREAS**, the City Council has determined that the use of portions of the City's rights-of-way for installation of a telecommunications system is appropriate from the standpoint of the benefits to be derived by local business and the region as a result of such services; and

**WHEREAS**, the City Council also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the future needs of the citizens of Tukwila and that the coordination, planning and management of the City's rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

**WHEREAS**, the Revised Code of Washington (RCW) authorizes the City to grant and regulate non-exclusive franchises for the use of public streets, rights-of-way and other public property for installation, operation and maintenance of communications facilities;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

## Section 1. Definitions.

A. For the purposes of this Franchise Agreement and the Exhibit attached hereto, the following terms, words, phrases, and their derivations where capitalized shall have the meanings given herein. Terms not defined herein shall have the meaning given in Title 11 of the Tukwila Municipal Code. Terms not defined herein or in Title 11 of the Tukwila Municipal Code shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by EXTENET. Words not otherwise defined shall be given their common and ordinary meaning.

B. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

1. **"Affiliate"** when used in connection with EXTENET means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with EXTENET.

2. **"Construct"** shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, replace, repair, monitor, maintain, use, relocate, remove, or support.

3. **"Default"** shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise that is not cured within 30 days after receipt of written notice from the non-defaulting Party.

4. **"Design Document(s)"** shall mean the plans and specifications for the construction of the Facilities meeting the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City's Infrastructure Design and Construction Standards Manual (the "Standards"), illustrating and describing the refinement of the design of the Telecommunications System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

5. **"Dispute"** shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise Agreement or the rights or obligations of either Party under this Franchise Agreement.

6. **"Emergency"** shall mean and refer to a sudden condition or set of circumstances that: (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and EXTENET's ability to continue to provide services if immediate action is not taken; or (b) presents an immediate threat of harm to persons or property if immediate action is not taken.

7. "**Facility or Facilities**" means any part or all of the facilities, equipment and appurtenances of EXTENET whether underground or overhead and located within the Public Rights-of-Way as part of EXTENET's Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.

8. "**Franchise**" shall mean the grant, once accepted, giving general permission to EXTENET to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

9. "**Law(s)**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus, or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated.

10. "**Party(ies)**" shall mean either the City or EXTENET or both.

11. "**Permit**" means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes, but is not limited to: a construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

12. "**Person**" means and includes any individual, corporation, partnership, association, joint-stock company, limited liability company, political subdivision, public corporation, taxing district, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

13. "**Public Right(s)-of-Way**" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses, or franchises for use thereof, or has regulatory authority to thereover, excluding: railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained, or leased by the City in its proprietary capacity or as an operator of a utility.

14. "**Public Works Director**" shall mean the Public Works Director for the City or their designee, or such officer or person who has been assigned the duties of Public Works Director or their designee.

15. "**Service**" shall mean the service or services authorized to be provided by EXTENET under the terms and conditions of this Franchise Agreement.

16. "**Telecommunications System**" shall mean all necessary Facilities to establish a small wireless network located in, under, and above City owned Public Right(s)-of-Way for the provision of personal wireless services, including: commercial

mobile services, unlicensed wireless services, and common carrier wireless exchange access services. "Telecommunications System" shall not mean or include Facilities owned or used by EXTENET for the provision of cable television services, video programming, or services other than personal wireless services, including ownership and/or operation of a dark fiber network.

17. "**Work**" shall mean any and all activities of EXTENET, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

## **Section 2. Non-exclusive Franchise Granted.**

A. The City hereby grants to EXTENET, subject to the conditions prescribed in this ordinance ("Franchise Agreement"), the franchise rights and authority to Construct and operate its Facilities necessary for a Telecommunications System within all City-owned Public Rights-of-Way, generally described as that area within the present and future boundaries of the City and hereinafter referred to as the "Franchise Area".

B. The foregoing franchise rights and authority ("Franchise") shall not be deemed to be exclusive to EXTENET and shall in no way prohibit or limit the City's ability to grant other franchises, permits, or rights along, over or under the areas to which this Franchise has been granted to EXTENET; provided, that such other franchises do not unreasonably interfere with EXTENET's exercise of franchise rights granted herein as determined by the City. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit or prevent the City from using the Franchise Area or affect the City's jurisdiction over such area in any way.

C. This Franchise Agreement merely authorizes EXTENET to occupy and use the Franchise Area. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Franchise Area to EXTENET.

D. The City does not warrant its title or property interest in or to any franchise area nor undertake to defend EXTENET in the peaceable possession or use of the franchise area. No covenant of quiet enjoyment is made.

**Section 3. Authority.** The Director of Public Works or designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise Agreement and may develop such lawful and reasonable rules, policies and procedures as the Public Works Director deems necessary to carry out the provisions contained herein.

**Section 4. Franchise Term.** The franchise rights granted herein shall remain in full force and effect for a period of 10 years from the effective date of this ordinance. However, this Franchise Agreement shall not take effect and EXTENET shall have no rights under this Franchise Agreement unless a written acceptance with the City is received pursuant to Section 5 of this Agreement. If EXTENET desires to renew this Franchise Agreement, it shall file a renewal application with the City between 180 days and 120 days prior to the expiration of the existing term. In the event of such filing, the City may extend the term of this Franchise Agreement in one-year increments beyond the

expiration date to allow processing of renewal. If the City elects to extend the term of this Franchise, written notice of the extension shall be provided to EXTENET prior to the Franchise expiration date. EXTENET must sign the written approval of the extension agreeing to all the terms of the prior agreement and the extension.

**Section 5. Acceptance of Terms and Conditions.** The full acceptance of this Franchise Agreement and all the terms and conditions shall be filed with the City Clerk within 30 days of the effective date of this ordinance in the form attached hereto as Exhibit A. Failure on the part of EXTENET to file said consent within 30 days of the effective date of this ordinance shall void and nullify any and all rights granted under this Franchise Agreement.

**Section 6. Construction Provisions and Standards.** The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this Franchise Agreement and may result in some or all of the penalties specified in Section 7.

1. **Permit Required.** No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the Franchise Area without first obtaining appropriate Permits from the City of Tukwila. In case of an emergency, EXTENET shall, within 24 hours of the emergency, obtain a Permit from the City of Tukwila's Public Works Department.

2. **Coordination.** Any element of a City capital construction project which is performed by EXTENET within the Franchise Area shall be inspected by a City inspector. All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with City infrastructure, future Capital Improvement Projects, all developer improvements, and pertinent codes and ordinances in effect on the date the permits and authorizations are issued for the affected Facilities.

3. **Notice to the Public.** Except in the case of an Emergency, the City retains the right to require EXTENET to notify the public prior to commencing any significant planned Construction that EXTENET reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

4. **Use of Public Rights-of-Way.** Within parameters related to the City's role in protecting the public health, safety, and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to the proposed Franchise Area and may deny access if EXTENET is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards provided in this Franchise Agreement or which is installed without prior City approval of the time, place, or manner of installation.

5. **Construction Standards.** Any construction, installation, maintenance, and restoration activities performed by or for EXTENET within the Franchise Area shall be constructed and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic and the rights and reasonable convenience of property owners, businesses, and residents along the Public Rights-of-Way. All



construction, installation, maintenance and restoration activities shall be conducted such that they conform to the City's development guidelines and standards in effect on the date the permits and authorizations are issued for the affected Facilities and comply with Title 11 of the Tukwila Municipal Code. EXTENET's Facilities shall be designed, located, aligned, and constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of the City or the City's existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of the City or the parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the effective date.

**6. Duty to Restore.**

a. EXTENET shall, after completion of construction of any part of its Telecommunications System, leave the Public Rights-of-Way and other property disturbed nearby in as good or better condition in all respects as it was in before the commencement of such Construction. EXTENET agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City Standards at the sole cost of EXTENET.

b. If EXTENET's Work causes unplanned, unapproved, or unanticipated disturbance or alteration or damage to Public Rights-of-Way or other public property, EXTENET shall, at EXTENET's sole cost, promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the satisfaction of the City and in accordance with City Standards.

c. If weather or other conditions do not allow the complete restoration required, EXTENET shall temporarily restore the affected Public Right-of-Way or public property. EXTENET shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

**7. Notice.** If EXTENET's Work causes unplanned, unapproved, or unanticipated disturbance or damage to Public Rights-of-Way or other public or private property, EXTENET shall promptly notify the property owner within 24 hours.

**8. Warranty.** EXTENET shall warrant any restoration work performed by EXTENET in the Public Rights-of-Way or on other public property for 2 years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by EXTENET, the City may, after 30 days prior notice to EXTENET, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from EXTENET. Within 30 days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, EXTENET shall pay the City.

**9. Restoration of Private Property.** When EXTENET does any Work in the Public Rights-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the reasonable satisfaction of the private property owner. Nothing within this Franchise authorizes any work by EXTENET on private property.

**10. Stop Work.** On written notice from the City that any Work does not comply with the Franchise Agreement, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition and establish conditions under which Work may be resumed. If so ordered, EXTENET shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that EXTENET is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order EXTENET to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its discretion. The City has the right to inspect, repair, and correct the unsafe condition if EXTENET fails to do so, and to reasonably charge EXTENET for the costs incurred to perform such inspection, repair, or correction. Payment by EXTENET will be made within 30 days following receipt of written notice including itemized invoice and supporting documentation evidencing such cost. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City codes or Standards.

**11. Alteration.** Except as may be shown in the Design Documents approved by the City or the records drawings, or as may be necessary to respond to an Emergency, EXTENET and EXTENET's contractors and subcontractors may not make any material alterations to the Franchise Area without the City's prior consent, which consent shall not be unreasonably withheld, delayed, or conditioned. The parties acknowledge that nothing in this agreement limits the City's rights under applicable federal, state, and local laws to regulate the placement and appearance of EXTENET's Facilities in the Franchise Area. Material alteration and/or deviation shall include, but not be limited to, a change in the dimension or height or location or placement of the Facilities. If EXTENET desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, EXTENET shall submit such change to the City in writing for its approval. EXTENET shall have no right to commence any such alteration or deviation until after EXTENET has received the City's approval of such change in writing. Under no circumstance shall EXTENET permanently affix anything in the Franchise Area that inconveniences the public use of the right of way or adversely affects the public health, safety, or welfare.

**12. Underground Installation Required.** All telecommunications cables and junction boxes or other vaulted system components shall be installed underground consistent with the requirements of Tukwila Municipal Code Section 11.32.090(B), unless otherwise exempted from this requirement, in writing, by the Public Works Director provided, however, this requirement shall not apply to the Facilities that are required to remain above ground in order to be functional. This requirement shall only apply where all other similarly situated utilities are required to underground as well.

**13. Relocation.**

a. The City shall have the right to require EXTENET to alter, adjust, relocate, re-attach, secure, or protect in place its Facilities within the public right-of-way

when reasonably necessary for construction, alteration, repair, or improvement of any portion of the public rights-of-way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, but are not limited to: public rights-of-way construction; public rights-of-way repair (including resurfacing or widening); change of public rights-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility, or public transportation systems, public work, public facility, or improvement of any government-owned utility; public rights-of-way vacation, and the construction of any public improvement or structure by any governmental agency acting in a governmental capacity. In the event the City requires EXTENET to relocate its Facilities, the City shall provide EXTENET with written notice requesting such relocation, along with plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination and the development of a relocation plan. The City and EXTENET shall meet at a time and location determined by the City to discuss the project requirements including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall notify EXTENET as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of emergency such notice shall be no less than 90 days.

b. To ensure timely execution of relocation requirements, EXTENET shall, upon written request from the City, provide at EXTENET's expense, base maps, current as-built information, detailed relocation plan (including detailed schedule of relocation activities, identification of critical path, identification of Facilities, and relocation procedures), and other design, technical or operational requirements within the time frame specified by the City.

c. EXTENET may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation within the time specified by the City. Such alternatives shall include the use and operation of temporary Facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise EXTENET in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, EXTENET shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by EXTENET full and fair consideration. In the event the City, in its sole discretion, decides not to accept the alternatives suggested by EXTENET, EXTENET shall relocate its Facilities as otherwise specified in Section 6, subparagraph 5.

d. Upon final approval of the relocation plan by the City, EXTENET shall, at its own expense, unless otherwise prohibited by statute, and at the time frame specified by the City, temporarily or permanently remove, relocate, place underground, change, or alter the position of any Facilities or structures within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any public improvement in or upon the rights-of-way. In the event relocation is required by reason of construction by a third party, non-governmental entity,

for the sole benefit of the third party, non-governmental entity, then EXTENET's relocation costs shall be borne by the third party.

e. If during the construction, repair, or maintenance of the City's public improvement project an unexpected conflict occurs from EXTENET's Facilities, EXTENET shall, upon notification from the City, respond within 24 hours to resolve the conflict.

f. EXTENET acknowledges and understands that any delay by EXTENET in performing the work to alter, adjust, relocate, or protect in place its Facilities within the public rights-of-way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the public rights-of-way, and result in damage to the City, including but not limited to, delay claims. EXTENET shall cooperate with the City and its contractors and subcontractors to coordinate such relocation work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

g. Should EXTENET fail, within 30 days of receipt of written notice from the City, to alter, adjust, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the reasonable cost of the work to EXTENET, including all reasonable costs and expenses incurred by the City due to EXTENET's delay. In such event, the City shall not be liable for any damage to any portion of EXTENET's system. In addition to any other indemnity set forth in this Franchise Agreement, EXTENET will indemnify, hold harmless, and pay the costs of defending the City from and against any and all claims, suits, actions, damages, or liabilities for delays on public improvement construction projects caused by or arising out of the failure of EXTENET to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, EXTENET shall not be responsible for damages due to delays caused by the City.

**14. Removal or Abandonment.** Upon the removal from service of any service antennas or other associated structures, Facilities and amenities, EXTENET shall comply with all applicable standards and requirements prescribed by the City of Tukwila's Public Works Department for the removal or abandonment of said structures and Facilities. No facility constructed or owned by EXTENET shall be abandoned without the express written consent of the City.

**15. Bond.** Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Franchise Agreement, EXTENET shall, upon the request of the City, furnish one bond executed by EXTENET for all of its Facilities in the City's rights-of-way, in such sum as may be set and approved by the City as sufficient to ensure performance of EXTENET's obligations under this Franchise Agreement, provided, however, that such sum shall not exceed 150% of the cost of the Telecommunications System to be installed by EXTENET in the City rights-of-way. At EXTENET's sole option, EXTENET may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of

security shall be in the form reasonably acceptable to the City. The bond shall be conditioned so that EXTENET shall observe all the covenants, terms, and conditions and shall faithfully perform all of the obligations of this Franchise Agreement, and to repair or replace any defective EXTENET work or materials discovered in the City's roads, streets, or property.

16. **"One-Call" Location and Liability.** EXTENET shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to EXTENET's system components or for interruptions in service to EXTENET customers which are a direct result of work performed for any City project for which EXTENET has failed to properly locate its lines and Facilities within the prescribed time limits and guidelines established by One-Call. The City shall also not be liable for any damages to the EXTENET system components or for interruptions in service to EXTENET customers resulting from work performed under a permit issued by the City.

17. **As-Built Plans Required.** EXTENET shall maintain accurate engineering plans and details of all installations within the City limits and shall provide, at no cost to the City, such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any work undertaken by EXTENET pursuant to this Franchise Agreement. The City shall reasonably determine the acceptability of any as-built submittals provided under this section.

18. **Recovery of Costs.** EXTENET shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise Agreement or under ordinances of the City in effect on the date the permits and authorizations are issued for the affected Facilities. Where the City incurs actual reasonable costs and expenses for review or inspection of activities undertaken through the authority granted in this Franchise Agreement or any ordinances relating to the subject for which permit fees have not been established, EXTENET shall pay such reasonable costs and expenses directly to the City.

19. **Taxes.** Nothing contained in this Franchise Agreement shall exempt EXTENET's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property owned by EXTENET within the City, or against any local improvement assessment imposed on EXTENET. Any fees, charges, and/or fines provided for in the City Municipal Code or any other City ordinance, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed, or due from EXTENET.

20. **Vacation.** If, at any time, the City shall vacate any City road, right-of-way or other City property which is subject to rights granted by this Franchise Agreement and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving 60 days written notice to EXTENET, terminate this Franchise Agreement with reference to such City road, right-of-way or other City property so vacated, and the City shall not be liable for any

damages or loss to EXTENET by reason of such termination other than those provided for in RCW 35.99.

## **Section 7. Franchise Compliance.**

**A. Franchise Violations.** The failure by EXTENET to fully comply with any of the provisions of this Franchise Agreement may result in a written notice from the City that describes the violations of the Franchise Agreement and requests remedial action within 60 days of receipt of such notice. If EXTENET has not attained full compliance at the end of the 60-day period following receipt of the violation notification, the City may declare an immediate termination of all franchise rights and privileges, provided that full compliance was reasonably possible within that 60-day period.

### **B. Emergency Actions.**

1. If any of EXTENET's actions under this Franchise Agreement, or any failure by EXTENET to act to correct a situation caused by EXTENET, is reasonably deemed by the City to create a threat to life or property, financial harm, or cause a delay of the construction, repair or maintenance of the public improvement, the City may order EXTENET to immediately correct said threat, financial harm, or delay or, at the City's discretion, the City may undertake measures to correct said threat, financial harm or delay itself; provided that, when possible, the City shall notify EXTENET in writing and give EXTENET an opportunity to correct within a specified time said threat, financial harm or delay before undertaking such corrective measures. EXTENET shall be liable for all reasonable costs, expenses and damages attributed to the correction of such an emergency situation as undertaken by the City to the extent that such situation was caused by EXTENET and shall further be liable for all reasonable costs, expenses and damages resulting to the City from such situation and any reimbursement of such costs to the City shall be made within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by EXTENET to take appropriate action to correct a situation caused by EXTENET and identified by the City as a threat to public or private safety or property, financial harm, or delay of the construction, repair or maintenance of the public improvement shall be considered a violation of the terms of this Franchise Agreement.

2. If, during construction or maintenance of EXTENET's Facilities, any damage occurs to an underground facility and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health or property, EXTENET or its contractor shall immediately call 911 or other local emergency response number.

**C. Other Remedies.** Nothing contained in this Franchise Agreement shall limit the City's available remedies in the event of EXTENET's failure to comply with the provisions of this Franchise Agreement, to include but not limited to, the City's right to a lawsuit for specific performance and/or damages.

**D. Removal of System.** In the event this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, EXTENET shall, at its sole expense, remove all system components and Facilities within 60 days of such

termination, provided that the City, at its sole option, may allow EXTENET to abandon its Facilities in place.

E. **Receivership.** At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of EXTENET whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless:

1. The receivership or trusteeship is timely vacated; or
2. The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise Agreement, and has remedied all defaults under the Franchise Agreement. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision, and limitation of this Franchise Agreement.

### **Section 8. Insurance.**

A. EXTENET shall maintain Commercial General liability insurance during the full term of this Franchise Agreement for bodily injury (including death) and property damages. The limit of liability shall be a combined single limit in the amount of \$2,000,000 for each occurrence and \$2,000,000 general aggregate.

B. Such insurance shall include as additional insured, the City, its officers, officials, and employees as their interest may appear under this Franchise Agreement, excluding worker's compensation and employer's liability; shall apply as primary insurance; and shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder. Upon receipt of notice from its insurer(s) that any insurance required by this Franchise Agreement will be cancelled or will not be renewed, and EXTENET will not replace such insurance with coverage as required by this Franchise Agreement, EXTENET shall provide the City with 30 days prior written notice of such cancellation. Notice shall be provided as required by Section 12 below. Should the City receive such notice, at City's discretion, the City may send a notice of default to EXTENET allowing EXTENET 15 days to cure its failure to maintain insurance as required by this Franchise Agreement. If EXTENET fails to cure the default within such 15-day period, the City may unilaterally terminate this Franchise Agreement by sending a written notice of termination to EXTENET.

C. EXTENET's contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity, and insurance requirements as may be required by City code or regulations, or other applicable Law. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of EXTENET shall be deemed servants and agents of EXTENET for the purposes of this Franchise Agreement and are subject to the same restrictions, limitations, and conditions as if the Work were performed by EXTENET. EXTENET shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in

compliance with this Franchise Agreement and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is EXTENET's responsibility to ensure that contractors, subcontractors, or other Persons performing Work on EXTENET's behalf are familiar with the requirements of this Franchise Agreement and other applicable Laws governing the Work performed by them.

**Section 9. Other Permits and Approvals.** Nothing in this Agreement shall relieve EXTENET from any obligation to obtain approvals or necessary permits from applicable federal, state, and City authorities for all activities in the Franchise Area.

**Section 10. Transfer of Ownership.**

A. The rights, privileges, benefits, title, or interest provided by this Franchise shall not be sold, transferred, assigned or otherwise encumbered, without the prior written consent of the City, with such consent not being unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by other hypothecation, or by assignment or any rights, title or interest in EXTENET's telecommunications system in order to secure indebtedness. Approval shall not be required for mortgaging purposes provided that the collateral pledged for any mortgage shall not include the assets of this franchise. Approval shall not be required for any transfer from EXTENET to another person or entity controlling, controlled by, or under common control with EXTENET. EXTENET may license Facilities to other users without the consent of the City provided that EXTENET remains solely responsible for the terms and conditions outlined in this Franchise Agreement.

B. The Parties acknowledge that Small Wireless Facilities or wireline facilities ("Site Equipment") deployed by EXTENET pursuant to this Agreement may be owned and/or remotely operated by a third-party wireless carrier customer ("Carriers") and installed and maintained by EXTENET pursuant to existing agreements between EXTENET and a Carrier. Such use of EXTENET'S equipment by third parties, or Attachment of third party (Carrier) owned equipment shall not constitute an Assignment under this Agreement. The Site Equipment shall be treated as EXTENET's Site Equipment for all purposes under this Franchise. EXTENET shall remain solely responsible and liable for the performance of all obligations under this Franchise with respect to any Site Equipment owned and/or remotely operated by a Carrier. EXTENET shall identify the Carrier on whose behalf it is operating the Site Equipment on each Pole at the time of permitting. EXTENET is not required to submit its contract with such Carrier.

C. In any transfer of this Franchise which requires the approval of the City, EXTENET shall show that the recipient of such transfer has the technical ability, financial capability, and any other legal or general qualifications as reasonably determined by the City to be necessary to ensure that the obligations and terms required under this Franchise Agreement can be met to the full satisfaction of the City. This Franchise may not be transferred without filing or establishing with the City the insurance certificates, security fund, and performance bond as required pursuant to this Franchise. The qualifications of any transferee shall be determined by a hearing before the City Council and the approval to such transfer shall be granted by resolution of the City Council. Any reasonable administrative costs associated with a transfer of this Franchise that requires



the approval of the City shall be reimbursed to the City within 30 days of such transfer. The transferee(s) shall thereafter be responsible for all obligations of EXTENET with respect to the Franchise; provided, that the transfer shall not in any respect relieve EXTENET, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, if the acts or omissions occur before the time of the transfer.

### **Section 11. Administrative Fees.**

A. Pursuant to the Revised Code of Washington (RCW), the City is precluded from imposing franchise fees for "telephone businesses" as defined in RCW 82.16.010, or "service provider" as defined in RCW 35.99.010, except that fees may be collected for administrative expenses related to such franchise. EXTENET does hereby warrant that its operations, as authorized under this Franchise Agreement, are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in 35.99.010.

B. EXTENET shall be subject to a one-time \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement. These costs shall include, but not be limited to, wages, benefits, overhead expenses, equipment and supplies associated with such tasks as plan review, site visits, meetings, negotiations and other functions critical to proper management and oversight of the City's right-of-way. Administrative fees exclude normal permit fees as stipulated in Title 11 of the Tukwila Municipal Code. Payment of the one-time administrative fee is due 30 days after notice of franchise approval.

C. The City reserves the right to exercise authority it has or may acquire in the future to charge a franchise fee as authorized by law and EXTENET shall in good faith endeavor to negotiate a reasonable Franchise fee or other fee if future law permits the City to charge a Franchise fee. However, the parties shall negotiate a site-specific charge acceptable to the parties for facilities for personal wireless services that meet one of the criteria in RCW 35.21.860(1)(e)(i)-(iii). Pursuant to RCW 35.21.860(1)(e), the City is not required to approve a use permit for the placement of a facility for personal wireless services that meets one of the criteria set forth in RCW 35.21.860(1)(e)(i)-(iii) absent such an agreement.

D. In the event EXTENET submits a request for work beyond the scope of this Franchise Agreement, or submits a complex project that requires significant comprehensive plan review or inspection, EXTENET shall reimburse the City for franchise amendments and reasonable actual-incurred expenses associated with the project. EXTENET shall pay such costs within 60 days of receipt of a bill from the City.

E. Failure by EXTENET to make full payment of bills within the time specified shall be considered sufficient grounds for the termination of all rights and privileges existing under this ordinance, utilizing the procedures specified in Section 7 of this ordinance.

**Section 12. Notices.** Any notice to be served upon the City or EXTENET shall be delivered to the following addresses respectively:

**City of Tukwila**

Office of the City Clerk  
6200 Southcenter Boulevard  
Tukwila, WA 98188  
Email: [TukwilaCityClerk@tukwilawa.gov](mailto:TukwilaCityClerk@tukwilawa.gov)  
Phone: 206-433-1800

With a copy to:  
Public Works Director  
City of Tukwila  
6300 Southcenter Boulevard Ste. 100  
Tukwila, WA 98188

**EXTENET**

ExteNet Systems, Inc.  
Attn: CFO  
3030 Warrenville Road, Suite 340  
Lisle, Illinois 60532

With copy to General Counsel & COO at same address  
Copy email to [NOTICE@extenetsystems.com](mailto:NOTICE@extenetsystems.com)

**Section 13. Indemnification.**

A. EXTENET shall use reasonable and appropriate precautions to avoid damage to persons or property in the construction, installation, repair, operation, and maintenance of its structures and Facilities within the Franchise Area. EXTENET shall release, indemnify, defend, and hold the City harmless from all claims, actions or damages, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any act or omission of EXTENET, its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to EXTENET by this Franchise, except in cases of City's gross negligence. In the event any claim or demand is presented to or filed with the City that gives rise to EXTENET's obligation pursuant to this section, the City shall within a reasonable time notify EXTENET thereof and EXTENET shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the City is named a party, and which suit or action is based on a claim or demand which gives rise to EXTENET's obligation pursuant to this section, the City shall promptly notify EXTENET thereof, and EXTENET shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, EXTENET may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require EXTENET to:

1. protect and save the City harmless from any claims, actions or damages;
2. settle or compromise any claim, demand, suit or action;
3. appear in or defend any suit or action; or,

4. pay any judgment or reimburse the City's costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the negligence or intentional acts of the City, its employees, agents or independent contractors.

B. To the extent of any concurrent negligence between EXTENET and the City, EXTENET's obligations under this paragraph shall only extend to its share of negligence or fault. The City shall have the right at all times to participate through its own attorney in any suit or action that arises out of any right, privilege, and authority granted by or exercised pursuant to this Franchise Agreement when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City shall be at the City's sole cost and expense.

C. With respect to the performance of this Franchise and as to claims made by EXTENET 's employees against the City, its officers, agents and employees, EXTENET expressly waives its immunity under Title 51 of the Revised Code Washington, the Industrial Insurance Act for injuries to its officers, agents and employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of EXTENET's officers, agents or employees against the City. This waiver is mutually negotiated by the parties.

**Section 14. Severability.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the City may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this ordinance; provided that, if the City elects to enforce the remaining provisions of the ordinance, EXTENET shall have the option to terminate the Franchise Agreement.

#### **Section 15. Reservation of Rights.**

A. The parties agree that this Franchise Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders and ordinances in effect on the date the permits and authorizations are issued for the affected Facilities. Accordingly, any provision of this Franchise Agreement or any local ordinance that may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this Franchise Agreement does not constitute a waiver of any rights or obligations by either party under the law.

B. Nothing in this Franchise Agreement shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing, widening or otherwise altering any Public Rights-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

#### **Section 16. Police Powers.**

A. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. EXTENET shall not by this Franchise Agreement obtain any vested rights to use any portion of the City right-of-way except for the locations approved

by the City and then only subject to the terms and conditions of this Franchise Agreement. This Franchise Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits.

B. Nothing in this Franchise Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of EXTENET's Facilities. City's approvals and inspections as provided herein are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Telecommunications System, suitability of the Franchise area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

**Section 17. Future Rules, Regulations and Specifications.** EXTENET acknowledges that the City may develop rules, regulations and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to EXTENET, shall thereafter govern EXTENET's activities hereunder; provided, however, that in no event shall regulations:

1. materially interfere with or adversely affect EXTENET's rights pursuant to and in accordance with this Franchise Agreement; or
2. be applied in a discriminatory manner as it pertains to EXTENET and other similar user of such facilities.

**Section 18. Entire Agreement.** This Franchise Agreement contains all covenants and agreements between the City and EXTENET relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise Agreement. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of EXTENET shall not be altered, modified, or added to except in writing signed by the City and EXTENET and approved by the City in the same manner as the original Franchise was approved.

**Section 19. Calculation of Time.** Except where a period of time refers to "business days," all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the effective date shall be determined as provided in this Franchise Agreement.

**Section 20. Time Limits Strictly Construed.** Whenever this Franchise Agreement sets forth a time for any act to be performed by EXTENET, such time shall be deemed to be of the essence, and any failure of EXTENET to perform within the allotted time may be considered a Default of this Franchise Agreement.

**Section 21. Joint Venture.** It is not intended by this Franchise Agreement to, and nothing contained in this Franchise Agreement shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between EXTENET and City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner that would indicate any such relationship. The Parties intend that the rights, obligations, and covenants in this Franchise Agreement and any collateral instruments shall be exclusively enforceable by the City and EXTENET, their successors, and assigns. No Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, EXTENET is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. However, nothing in this section prevents an assignment as provided for in this Franchise Agreement.

**Section 22. Binding Effect Upon Successors and Assigns.** All of the provisions contained in this Franchise Agreement shall be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees and assigns of EXTENET; and all privileges as well as any obligations and liabilities of EXTENET shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever EXTENET is named herein.

**Section 23. Waiver.** No failure by either Party to insist upon the performance of any of the terms of this Franchise Agreement or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of this Franchise Agreement. None of the terms of this Franchise Agreement to be kept, observed, or performed by either Party, and no Default thereof, shall be waived, altered, or modified except by a written instrument executed by the injured Party. No waiver of any Default shall affect or alter this Franchise Agreement, but each of the terms of this Franchise Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default thereof. No waiver of any Default of the defaulting Party shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of the subsequent Default of the same covenant, term, or conditions.

**Section 24. Survival of Terms.** Upon the expiration, termination, revocation, or forfeiture of the Franchise Agreement, EXTENET shall no longer have the right to occupy the Franchise area for the purpose of providing services authorized herein. However, EXTENET's obligations under this Franchise Agreement to the City shall survive the expiration, termination, revocation, or forfeiture of these rights according to its terms for so long as EXTENET's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as EXTENET transfers ownership in all Facilities in the Franchise Area to the City or a third-Party, or until such time as EXTENET abandons said Facilities in place, all as provided herein. Said obligations include, but are not limited to: EXTENET's obligations to indemnify, defend,

and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform EXTENET's work.

#### **Section 25. Force Majeure.**

A. In the event EXTENET is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, severe weather conditions, employee strikes and unforeseen labor conditions not attributable to EXTENET's employees, EXTENET shall not be deemed in Default of provisions of this Franchise Agreement.

B. If EXTENET believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise Agreement, EXTENET shall provide documentation as reasonably required by the City to substantiate EXTENET's claim. EXTENET shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation that is satisfactory to the City; provided that EXTENET shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that EXTENET takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise Agreement without unduly endangering the health, safety, and integrity of EXTENET's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property or private property.

**Section 26. Attorneys' Fees.** In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise Agreement or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to the extent that the suit, action, arbitration, or other proceeding is brought to interpret any term, condition, provision, section, article, or clause of this Franchise Agreement.

**Section 27. Venue.** This Franchise Agreement shall be governed by, and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Franchise Agreement, or seeking a declaration of rights, duties, or obligations herein shall be initiated in the Superior Court of King County, and shall not be removed to a federal court, except as to claims over which such Superior Court has no

jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

**Section 28. Corrections by City Clerk or Code Reviser Authorized.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**Section 29. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

\_\_\_\_\_  
Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: \_\_\_\_\_  
Passed by the City Council: \_\_\_\_\_  
Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_  
Ordinance Number: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney

Attachment: Exhibit A – Franchise Agreement Acceptance Form

**EXHIBIT A**

**Extenet Franchise Agreement Acceptance Form**

Date: \_\_\_\_\_

City of Tukwila  
City Clerk's Office  
6200 Southcenter Boulevard  
Tukwila, WA 98188

Re: Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2020.

Dear City Clerk:

In accordance with and as required by Section 5 of City of Tukwila Ordinance No. \_\_\_\_\_, passed by the City Council and approved by the Mayor on \_\_\_\_\_ (the "Ordinance"), Extenet Systems, Inc., a Delaware limited partnership, hereby accepts the terms, conditions and obligations to be complied with or performed by it under the Ordinance.

By: Extenet Systems, Inc.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

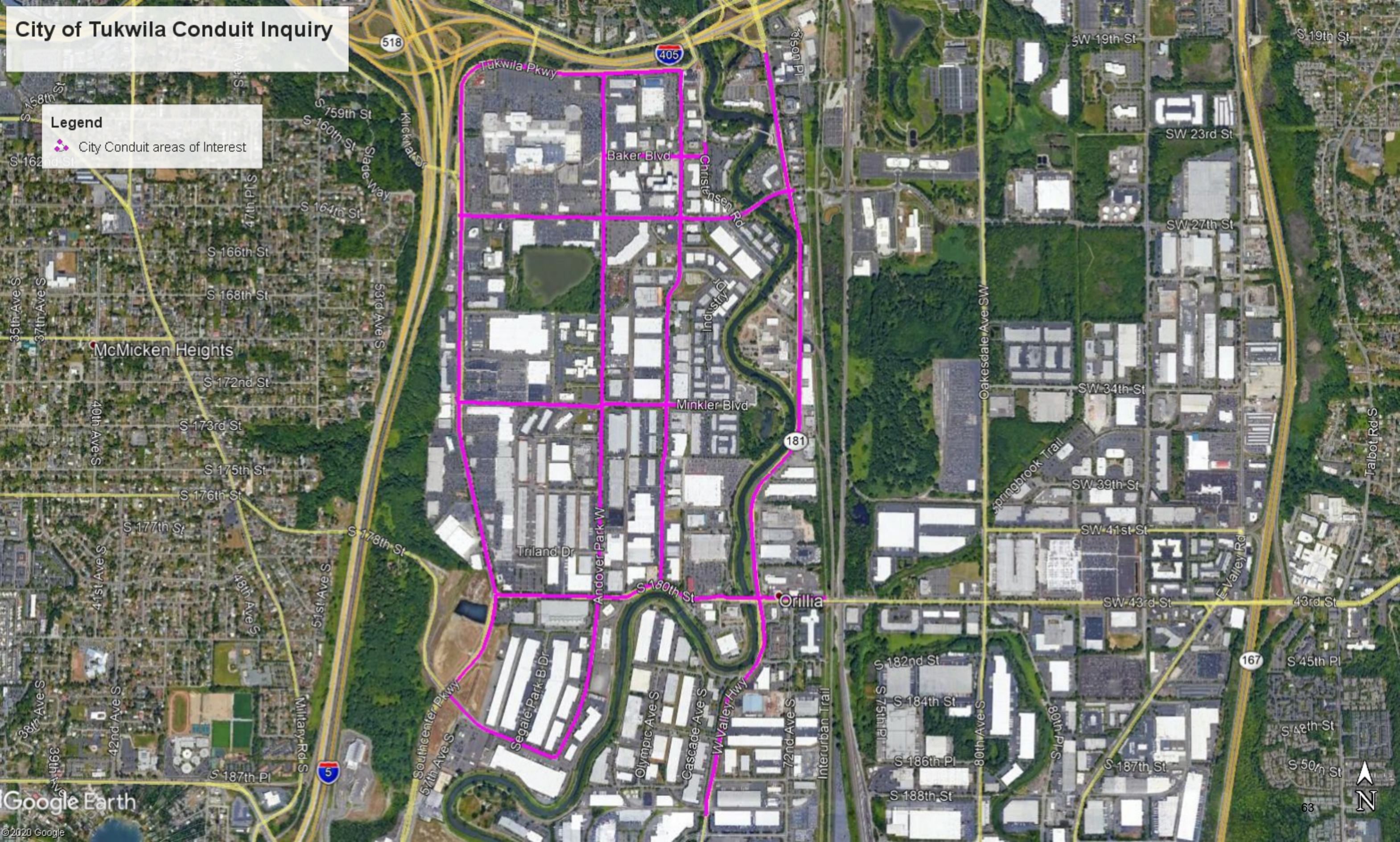
cc: Public Works Director, City of Tukwila, 6300 Southcenter Blvd., Tukwila, WA 98188



# City of Tukwila Conduit Inquiry

**Legend**

- City Conduit areas of Interest









## **INFORMATIONAL MEMORANDUM**

**TO: Transportation and Infrastructure Committee**  
**FROM: Joseph Todd, Technology and Innovation Services Director**  
**BY: Eric Compton, Franchise and Technology Specialist**  
**CC: Mayor Ekberg**  
**DATE: November 13, 2020**  
**SUBJECT: Zayo Group, LLC Asset Sharing Agreement**

### **ISSUE**

Approve an Agreement between the City and Zayo granting the sharing of telecommunications assets in a mutually beneficial manner.

### **BACKGROUND**

Zayo is a global provider of telecommunication services that works with local Internet Service Providers, Cable companies, and Wireless carriers. In order to facilitate the building of their infrastructure, Zayo wishes to utilize certain City assets and in exchange provide access to their infrastructure or other assets in a mutually beneficial manner. These agreements can help both Zayo and Tukwila save money and expedite telecommunications growth in the community.

### **DISCUSSION**

Zayo has signed a similar agreement with other local municipalities and has reached out to Tukwila to partner with the City. Zayo has been an invaluable partner in previous City initiatives such as the Municipal Wi-Fi project and Cloud PBX.

### **FINANCIAL IMPACT**

No direct negative cost to the budget will be brought. This agreement is intended to save money on projects while partnering with Zayo so share costs.

### **RECOMMENDATION**

Council is being asked to approve the Agreement allowing Zayo Group, LLC. and consider this item on the Consent Agenda at the November 23, 2020 Regular Meeting.

### **ATTACHMENTS**

Zayo Asset Exchange Agreement

**THIS ASSET EXCHANGE LICENSE AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into as of the date of the last signature below (the “Effective Date”), between Zayo Group, LLC, a Delaware limited liability company, with primary offices at 1805 29<sup>th</sup> Street, Suite 2050, Boulder, CO 80301 (“Zayo”), and City of Tukwila, a municipality in the State of Washington (“City”) Zayo and City may be hereinafter referred to individually as “Party”, and collectively as “Parties.”

**WHEREAS**, each Party owns or has rights in Conduit or Fiber within the City and each Party wishes to exchange certain Conduit or Fiber from their respective Conduit or Fiber systems within the City boundaries, and enter into an agreement to facilitate future exchanges.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and consideration set forth in this Agreement, the Parties do hereby agree as follows:

- 1. Definitions.** The following terms, whether in the singular or in the plural, when used in this Agreement shall have the meaning specified in this Section 1. Use of the word “or” when describing “Fiber or Conduit” is not intended to mean or convey that it is exclusively one or the other unless the context specifically requires.
  - 1.1 Authorizations: All governmental or municipal approvals and authorizations; all rights-of-way and pole attachment agreements; and all leases, licenses, consents or other agreements necessary for the Licensor to construct, install, maintain and repair its Conduit System and to license portions of the Conduit System to a third party.
  - 1.2 Asset: Conduit or Fiber within a Party’s Conduit System or otherwise agreed between the Parties.
  - 1.3 Asset Exchange Form (or “AEF”): The form exchanged between the Parties via email or hardcopy, to communicate and agree to information related to an Asset Request, Asset Use Authorization, and Notice of Asset Availability, as shown on Exhibit A.
  - 1.4 Asset Request: A formal request for a license to use Conduit or Fiber, within a specific portion of the other Party’s Conduit System (either the City Conduit System or the Zayo Conduit System as defined), made by completion of the Asset Request section of an AEF.
  - 1.5 Asset Use Authorization: Unless rejected upon request, Licensor’s acceptance and grant to an Asset Request providing authorization to license specific Conduit or Fiber. The Asset Use Authorization is executed by completing the Asset Use Authorization section of the Asset Exchange Form.
  - 1.6 City Conduit System: Existing Conduit or Fiber, owned by City, as more particularly described on an AEF or exhibits attached thereto; provided that, subject to the terms of this Agreement, such Conduit or Fiber may be modified from time-to-time in City’s sole discretion provided such modifications do not impact Licensee use of the Licensed Conduit or Fiber unless otherwise permitted herein.
  - 1.7 Conduit: Conduit which (a) was installed for the purpose of, or capable of being used for, communication fiber installation in accordance with Bellcore Standards, (b) is located in the City, and (c) is owned by either Zayo or City, as the context requires.
  - 1.8 Conduit System: Either the City Conduit System or the Zayo Conduit System, as context requires.
  - 1.9 Fiber: dark (unlit) fiber optic cable of one or more fibers owned by either the City or Zayo, as the case may be, and as specified in an AEF or exhibits attached thereto.

- 1.10 License or Licensed Asset: Asset Use Authorization by City or Zayo, as the case may be, to use the Licensed Conduit or Fiber for the License Term.
- 1.11 License Term: The term of each license for use of Licensed Conduit or Fiber, as further defined in Article 6 of this Agreement.
- 1.12 Licensee: The Party authorized under this Agreement and an AEF to use Licensed Conduit or Fiber within the other Party's Conduit System.
- 1.13 Licensor: The Party granting a License pursuant to an Asset Use Authorization.
- 1.14 Notice of Asset Availability: Notice from Licensor to Licensee that the Licensed Conduit or Fiber meets the Specifications and is available for Licensee's use, provided by completion of the Notice of Asset Availability section of the Asset Exchange Form.
- 1.15 Specifications: The minimum specifications identified on an AEF that Licensed Conduit or Fiber must meet as a precondition to the Notice of Asset Availability.
- 1.16 Zayo Conduit System: Existing Conduit or Fiber owned by Zayo, as described on an AEF or exhibits attached thereto. on Exhibit A; provided that, subject to the terms of this Agreement, such Conduit or Fiber may be modified from time-to-time in Zayo's sole discretion provided such modifications do not impact Licensee use of the Licensed Conduit or Fiber unless otherwise permitted herein.

## **2. Exchanging Assets.**

- 2.1 As set forth in an executed AEF, City agrees, subject to the terms and conditions of this Agreement, to grant a License to Zayo to use available Conduit or Fiber within City's Conduit System, including the right and permission to access and use any City easement(s) that the City's Conduit System routes through. This only applies to those easements that the City is authorized to grant access to Zayo and Zayo receives permission to access from the City. As set forth in an executed AEF, Zayo agrees, subject to the terms and conditions of this Agreement, to grant a License to City to use commercially available Conduit or Fiber within Zayo's Conduit System. Nothing in this agreement shall purport to give the City the right to resell any Fiber it may acquire in this Agreement. Each segment of conduit or fiber strands licensed will entitle the Licensor to the same amount of conduit or fiber strands on the Licensee's Conduit System.
- 2.2 City and Zayo agree that the assets to be exchanged must be available at the time of the AEF exchange.
- 2.3 City and Zayo agree that the intent of the Parties is that the Licensed Assets exchanged between the Parties will remain balanced and approximately equal. The Parties agree that the initial AEF's executed by the Parties on the same date as the Effective Date are an equal exchange of Licensed Assets. Further AEF equity analysis will consider Licensed Asset type, length (on a linear foot or a mile-for-mile basis, whichever is most applicable to the request), capacity and location as agreed between the Parties. Licensed Assets within the central business area, will be calculated at twice its length for purposes of exchanges of Assets outside the central business area.
- 2.4 If the amount of a Licensed Asset that one Party has Licensed, as to Conduit to Conduit or Fiber to Fiber amounts, exceeds the amount of Licensed Asset that the other Party has Licensed, and the difference is greater than 15% ("Disparate Licensed Asset Amount"),

then the Party with excessive Licensed Asset will not request additional AEF until the Disparate Licensed Asset Amount is corrected (meaning less than 15%). Notwithstanding the foregoing, the Parties may agree to alternate consideration to correct a Disparate Licensed Asset Amount.

- 2.5 Either Party may relinquish its right to use any segment of Licensed Asset prior to the end of the License Term. If one Party relinquishes Licensed Asset which results in Disparate Licensed Asset Amount, then the Party with excessive Licensed Asset will not request additional AEF until the Disparate Licensed Asset Amount is corrected or the Parties otherwise agree.
- 2.6 Each Party will maintain a record of the Licensed Assets exchanged pursuant to this Agreement. Upon reasonable request by a Party, not greater than once per year, the Parties will meet to review and validate these records.
- 2.7 This agreement does not remove the requirement that Zayo must obtain all permits or other approval as required by law to perform any work under this agreement. Prior to a completed exchange, if either Party is unable to obtain, through no fault of its own, permits or other approvals required to perform any work under a particular AEF, that request, and its corresponding exchange shall cease to exist and each Party shall return back into the position they were in before the agreement was made.
- 2.8 Following a completed exchange, if one Party loses the ability to maintain required rights for an exchanged Licensed Asset, then that Party shall pay the other party the fair market value for the corresponding Licensed Asset which was exchanged.

### **3. Asset Requests and Use Authorization.**

- 3.1 Submission of AEF. All requests for Licensed Assets shall be made utilizing a AEF, with each Party completing information as Licensor or Licensee, as applicable, and forwarding the AEF via email to both address of a Party as indicated below (two (2) required for back-up purposes):

If to Zayo: david.boileau@zayo.com

If to City: eric.compton@tukwilawa.gov  
joel.bush@tukwilawa.gov

- 3.2 When one Party wishes to use Assets of the other Party, such Party will complete the Asset Request section of the AEF, and submit the form to the other Party's email addresses. Submission of an AEF to one email address but not both email addresses shall not, by itself, constitute a failure to properly submit an AEF.
- 3.3 Acceptance or Denial of AEF. Within fifteen (15) business days of receipt of a completed Asset Request, Licensor will complete the Asset Use Authorization section of the AEF and return the form to Licensee. Licensor's response will either authorize Licensee's use of the Asset upon Notice of Asset Availability or indicate denial of the Asset Request.
- 3.4 Notice of Asset Availability. Notice of Asset Availability can take place on the same date as the Asset Use Authorization if the Asset meets the Specifications on the same date. If the Notice of Asset Availability cannot take place on the same date as the Asset Use Authorization, Licensor shall send back the AEF without completion of the Notice of Asset Availability section. Licensor shall then promptly provide email notice to Licensee when the Asset is available, and Licensee shall send back the AEF for Licensor's completion of

the Notice of Asset Availability. In all cases, upon completion of the Notice of Asset Availability from Licensor, the License Term shall begin.

- 3.5 Licensor will use commercially reasonable efforts to ensure that the requested Asset complies with all applicable Specifications and ready for Licensee's use within thirty (30) days of date of an Asset Use Authorization.

#### **4. Access and Escort.**

- 4.1 Handholes and Manholes. Unless otherwise specifically agreed in an AEF, Licensee will install handholes and/or manholes as a means of accessing the Licensed Conduit or Fiber. Licensee shall be responsible for all "one-call" responses and cable locate services for the Licensed Conduit or Fiber. All costs associated with Licensee's access to the Licensed Conduit or Fiber will be borne by the Licensee. The City shall not be required to install handholes or manholes for Conduit that has been installed prior to the entry of this Agreement. If necessary, Zayo may install handholes or manholes at its own cost.
- 4.2 Activities Around or In Licensed Assets. If Licensee's activities will be performed within four (4) feet of Licensor's Conduit System, Licensee must contact Licensor to schedule the activity at a mutually agreed time allowing for Licensor to provide an escort, at Licensor's discretion and at Licensee's cost. Escort services will be requested using the Request for Field Activity ("RFA") form attached as Exhibit B or such other form as mutually agreed in writing. For Fiber placement within a Licensed Conduit, a RFA shall be made. Licensor shall grant such access as agreed to in an RFA, provided however, that Licensor shall not delay such an access request by more than ten (10) business days of receipt of such request. Licensee shall be responsible for all costs, including Licensor's costs for an RFA for Fiber placement. Licensor's costs for RFA may include a fifteen percent (15%) markup over costs.
- 4.3 The Licensee shall have the right, but not the obligation, to supervise and oversee any work performed by the Licensor in or to the Licensee's facilities, at Licensee's cost.

#### **5. Repair and Maintenance**

- 5.1 If either Party wishes to perform any repairs or maintenance they must follow all state and local laws for any and all work within in the right of way or other locations that require approval by state and local governing bodies, this includes permits and other requirements. Zayo shall use commercially reasonable efforts to cause the Licensed Assets to continue to meet the Specifications during the License Term. Zayo shall perform all routine maintenance and operations for the shared conduit and fiber system at its own cost, provided that City shall reimburse Zayo for its proportionate share of all emergency maintenance and repair costs including but not limited to all costs associated with "one-call" responses, cable locate services and placement of a locate wire for the Licensed Conduit or Fiber and any other repair costs incurred due to damage caused by the City, plus fifteen percent (15%). Proportionate share means the number of licensed fibers divided by the total amount of fibers for the particular segment.
- 5.2 Routine Maintenance. From time to time, at the Zayo's reasonable discretion, and after adequate advance notice to the City (which shall be at least 72 hours), the Zayo will schedule and perform specific periodic maintenance and repair checks and services on both the Licensed Assets. This maintenance shall be provided at no cost to the City.
- 5.3 Emergency Maintenance.

- (a) Within two (2) hours after a Zayo receives a trouble report of imminent or actual failure or impairment of the Licensed Conduit or Fiber, the Zayo shall commence all commercially reasonable efforts to repair such failure or impairment to cause the Licensed Conduit or Fiber to meet the Specifications. At a minimum, such commercially reasonable efforts shall include dispatching at least one service technician (or more if commercially reasonably prudent to do so) to the source of the reported problem.
- (b) Within four (4) hours after Zayo receives a trouble report of the type described in section (a), upon the City's request, Zayo shall provide adequate assurance that Zayo is diligently pursuing remedial action. If the Zayo fails to initiate and diligently pursue repair within six (6) hours after the trouble report, then the City may, but shall not be obligated to, effect reasonable repair or replacement to restore the Licensed Conduit or Fiber to the Specifications ("Self Help"). Zayo shall reimburse the City for all reasonable costs and expenses for Self Help incurred within forty-five (45) days after receipt of an invoice which shall include backup documentation for all charges. If the City performs Self Help, the City shall be responsible to perform such Self Help in a professional and workmanlike manner in accordance with industry standards and if necessary shall indemnify Zayo in accordance with 12.2.
- (c) If the City does not elect to repair the Licensed Conduit or Fiber pursuant to subsection (b), and Zayo fails to restore the Licensed Conduit or Fiber to the Specifications within twelve (12) hours after the trouble report, then upon the City's request, Zayo shall review its Conduit System and propose alternate Licensed Assets with the same end points and capacity at least equal to the capacity or fiber count of the failed Licensed Conduit or Fiber, if available. If such alternative Licensed Asset is not available, the City may terminate the Licensed Asset pursuant to the terms of this Agreement.
- (d) Notice of interruption arising from relocation, condemnations and Force Majeure (as defined in Section 14) events shall be treated as a trouble report for purposes of this Section 5 and shall require prompt notice via email to both address of a Party as indicated below (two (2) required for back-up purposes):

If to Zayo: david.boileau@zayo.com

If to City: eric.compton@tukwilawa.gov  
joel.bush@tukwilawa.gov

**6. Term.** The term of this Agreement, shall begin on the Effective Date, and shall end on the expiration of the last AEF License Term. Each License Term shall begin upon receipt of Notice of Asset Availability, and shall end on the last day of the AEF License Term.

**7. Representations Regarding Authorizations.**

7.1 Licensor represents, warrants and covenants that:

- (a) it has obtained, and will use commercially reasonable efforts to maintain all Authorizations throughout any License Term; and
- (b) it has the full right and authority under the Authorizations to enter into this Agreement and perform its obligations hereunder, and the same will not violate the Authorizations (with or without the giving of notice or the lapse of time or both) or require any consent, approval, filing or notice under the Authorizations or under



any provision of any law, rule or regulation, court order, judgment or decree applicable to the Licensor; and

- (c) it has no knowledge of any defect in the normal operating condition of the Conduit System that would have an adverse effect on the ability of the other Party to utilize Licensed Conduit or Fiber to provide telecommunications services to its customers; and
- (d) it will exercise its rights and perform its obligations hereunder only in accordance with all applicable laws, rules and regulations; and
- (e) it will perform all maintenance services in a professional and workmanlike manner in accordance with industry standards.

7.2 Licensee represents, warrants and covenants that:

- (a) Licensee's use of the Licensed Conduit or Fiber will be limited to the provision of communication services in accordance with all Federal, State and local laws, rules, regulations, codes, statutes and subject to all Authorizations; and
- (b) Licensee has obtained all rights of way, authorizations and consents necessary to use the Licensed Conduit or Fiber. Licensee will indemnify, defend and hold harmless Licensor from any claims related to its use of the Licensed Conduit or Fiber; and
- (c) it has the full right and authority under the Authorizations to enter into this Agreement and perform its obligations hereunder, and the same will not violate the Authorizations (with or without the giving of notice or the lapse of time or both) or require any consent, approval, filing or notice under the Authorizations or under any provision of any law, rule or regulation, court order, judgment or decree applicable to the Licensor; and
- (f) it will perform all work related to access and use of the Licensed Conduit or Fiber in a professional and workmanlike manner in accordance with industry standards.

## **8. Default and Termination.**

8.1 Neither Party shall be in default under this Agreement herein unless and until such Party has received written notice of such default from the other Party, and has failed to cure the default within thirty (30) days after receipt of such notice, except for a payment default which must be cured within ten (10) days after receipt of such notice. Notwithstanding, when a default (unrelated to payment) cannot reasonably be cured within such thirty (30) day period, the time for curing such default shall be extended for a period no longer than sixty (60) days from the date of the receipt of the default notice if the Party proceeds promptly to cure the default with due diligence.

8.2 Unless otherwise provided herein, a Party shall be in default if (i) such Party breaches any term or provision of this Agreement or fails to comply with the provisions of this License; (ii) such Party becomes insolvent; (iii) a petition under any of the bankruptcy laws is filed by or against such Party; (iv) such Party makes a general assignment for the benefit of creditors; or (v) a receiver, whether temporary or permanent, is appointed for the property of such Party or any part thereof.

- 8.3 Upon the failure by the defaulting Party to timely cure any default, the non-defaulting Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, and/or (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the above, if the defaulting Party certifies to the non-defaulting Party in writing that a default has been cured, such default shall be deemed to be cured unless the non-defaulting Party notifies the defaulting Party in writing within fifteen (15) days of receipt of the defaulting Party's notice of cure.
- 8.4 In the event of a payment default which has not been cured, Licensor may suspend Licensee's use of the Licensed Conduit or Fiber, without further notice and by whatever means Licensor deems appropriate, until the payment default is cured and for as long as thirty (30) days from the date of notice. If the payment default has not been cured within such thirty (30) day period, then Licensor may immediately terminate this Agreement and pursue any legal remedies it may have under applicable law or principles of equity relating to Licensee's breach.
- 8.5 Notwithstanding the foregoing, no termination of this Agreement shall affect the rights or obligations of any Party hereto with respect to any payment hereunder for services rendered prior to the date of termination and the non-defaulting Licensee shall not be required to relinquish its rights in the Licensed Conduit or Fiber as a result of a Licensor's default and failure to cure.
- 8.6 City shall use the Licensed Assets for City's own use. Under no circumstances shall City resell, lease, license, provide an IRU, or otherwise provide use of Licensed Assets, to any third party. A violation of this Section 8.6 shall be grounds for immediate termination of the Licensed Asset.

## **9. Taxes.**

- 9.1 Each Party shall pay the taxes that apply to their use of facilities under this agreement. Zayo shall have the ability to transfer, sell, assign, swap, exchange, lease, sublease, license, sublicense, resell or grant infeasible or other rights of use in or to all or any part of the optical fiber strands it pulls within the Licensed Asset(s) it acquires under this Agreement as "dark fiber" as such term is commonly understood in the telecommunications industry. Zayo's resell rights do not include the right to transfer bear legal title. Zayo is responsible for any actions that may violate this Agreement by those entities that have been granted access or use of optical fiber strands by Zayo.

## **10. Relocation of the Facilities.**

If the need arises either through law, permit, or other circumstances to relocate the Conduit System and/or Licensed Conduits or Fiber, or a portion thereof. Each Party shall be responsible for its proportionate share (as defined in Section 5.1) of relocation costs. Licensor shall give the Licensee at least three (3) months' prior notice, or as soon as practicable, of any relocation or of any governmental proceedings that might result in a relocation, or such lesser amount of notice as the Licensor receives from such governmental authority. Relocation costs means the net relocation costs adjusted for amounts Licensor may receive from any third-party.

## **11. Condemnation.**

- 11.1 If at any time during the Agreement Term, all or any significant portion of the Conduit System or the Licensed Conduit or Fiber shall be taken for any public or quasi public purpose by any authority by the exercise of the right of condemnation or eminent domain,

such a taking shall be an interruption of use that shall be handled in accordance with Section 5, Repair, Maintenance and Continuity.

11.2 Each Party shall notify the other Party immediately upon learning of any condemnation proceeding filed against its Conduit System which may impact the other Party's Licensed Conduit or Fiber.

## **12. Indemnification and Exclusion of Certain Damages.**

12.1 Zayo shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with its performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The City shall defend, indemnify and hold Zayo, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with its performance of this Agreement, except for injuries and damages caused by the sole negligence of Zayo.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Zayo, its officers, officials, employees and volunteers and the City, its officers, officials, employees, and volunteers, Zayo's liability hereunder shall be only to the extent of Zayo's negligence and the City's liability hereunder shall be only to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Zayo's and the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12.2 Waiver of Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CIRCUMSTANCES TO THE OTHER PARTY FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR OTHER SIMILAR DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT

## **13. Insurance.**

13.1 The parties agree that they shall procure and maintain for so long as that party is in use of the IRU Conduit or IRU Fiber, as the case may be, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to that party, its agents representatives or employees. The parties shall require that every contractor and subcontractor maintain substantially the same insurance coverage with substantially the same limits as required of that party. The parties shall procure insurance from insurers with a current A.M. Best rating of not less than A-VII. Zayo shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Agreement. The parties shall maintain insurance that includes:

(a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form that provides equivalent liability coverage.

- (b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an additional insured under Grantee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage;
  - (c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and
  - (d) Umbrella liability policy with limits not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.
- 13.2 Maintenance of insurance shall not be construed to limit the liability of either party to the coverage provided by such insurance, or otherwise limit a party's recourse to any remedy available at law or equity. Further, a party's maintenance of insurance policies required by this agreement shall not be construed to excuse unfaithful performance by that party.
- 13.3 If the Zayo maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Zayo, irrespective of whether such limits maintained by Zayo are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Zayo.
- 13.4 Zayo shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.
- 13.5 Failure on the part of the Zayo to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to Zayo to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Zayo from the Public Entity.

**14. Force Majeure.**

Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than fourteen (14) working days after the event, of the impediment and its effect

on the ability to perform; failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement.

**15. Assignment.**

City shall use the Licensed Conduit or Fiber for City's own use. Under no circumstances shall City resell, lease, license, provide an IRU, or otherwise provide use of Licensed Conduit or Fiber Stands, to any third party. Notwithstanding, Zayo may assign this Agreement in its entirety without the City's consent, to an entity in which such Zayo or its parent company directly or indirectly owns a majority of the voting interests, or to any person, firm or corporation into or with which it may be merged or consolidated or that purchases all or substantially all of Zayo's assets by providing notice of such assignment to the City.

**16. Notice.**

16.1 Other than notice for AEF and maintenance, all other notices, to be effective, must be in writing and delivered by pre-paid commercial overnight delivery service, or by first class mail, return receipt requested, addressed as follows:

If to Zayo:                   Zayo Group, LLC  
                                  ATTN: General Counsel  
                                  1805 29<sup>th</sup> Street, Suite 2050  
                                  Boulder, CO 80301

If to City:                    CITY of Tukwila  
                                  ATTN: IT Manager  
                                  6300 Southcenter Blvd  
                                  Tukwila, WA 98168

Either Party may change its notice address(es) by written notice to the other Party.

16.2 Notice shall be effective on the date of the addressee's receipt or refusal, as the case may be.

**17. Dispute Resolution and Governing Law.**

In the event of any claim or dispute under or in connection with this Agreement, the Parties shall negotiate in good faith to resolve the claim or dispute or, upon the failure to resolve such claim or dispute through good faith negotiations, this Agreement shall be governed by and construed in accordance with the laws of the State of Washington without giving effect to the principles of conflicts of laws. Venue for any dispute arising under this Agreement shall be in Pierce County Superior Court.

**19. Miscellaneous.**

This Agreement, including all Exhibits, sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior understandings and agreements on such subject

matter. No amendment or modification to this Agreement shall be valid unless in writing and signed by both Parties. The only relationship between the Parties is that of licensor and licensee with respect to the Licensed Conduit, and otherwise as independent contracting Parties, and specifically, but without limitation, the Parties are not partners in any undertaking. THIS AGREEMENT SHALL BE INTERPRETED AND ENFORCED UNDER THE LAWS OF WASHINGTON WITHOUT REGARD TO CONFLICTS OF LAWS. If any provision of this Agreement is unenforceable, it shall be deemed stricken from this Agreement and shall have no effect on any other provision. This Agreement shall be binding upon and inure to the benefit of Parties and their respective representatives, successors and assigns. Headings are for convenience only and shall not affect the interpretation of this Agreement. This Agreement shall become effective only upon execution by both Parties. Both Parties have been represented by counsel and neither Party shall be deemed to be the drafter of this document for purposes of interpreting an ambiguity against the drafter. There are no third party beneficiaries of this Agreement. "Days" shall mean calendar days, unless otherwise specified. Business days shall mean all days other than Saturdays, Sundays and Federal holidays. No waiver shall be valid unless in writing and signed by the Party against whom enforcement is sought.

- 20. Waiver. No delay or omission by either party to exercise any right or power occurring upon non-compliance or failure of performance by the other party shall impair that right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements to be performed by the other party shall not be construed to be a general waiver of any such covenants, conditions or agreements, but the same shall be and remain at all times in full force and effect.
  
- 21. Severability. In the event any term, covenant or condition of this Agreement, or the application of such term covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms covenants and conditions of Agreement.

IN WITNESS WHEREOF, the Parties have caused this Asset Exchange Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

**ZAYO GROUP, LLC**

**CITY OF TUKWILA**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
ASSET EXCHANGE FORM**

This Asset Exchange Form shall be processed in accordance with the Asset Exchange Agreement by and between Zayo and City of Tukwila dated \_\_\_\_\_. If a License is granted hereunder, the license shall be for the term listed below.

<b>ASSET REQUEST</b> (completed by the Licensee):	
Requesting Party:	
Date:	
Contact Person:	
Phone:	EMAIL:
AEF Term:	
AEF Renewal Term:	
<b>Conduit Request</b>	
Specifications:	
A Location:	
Z Location:	
Number of Conduit:	
Size of Conduit:	
Access Points:	
<b>Fiber Request</b>	
Specifications (fiber type, requirements, etc.):	
A Location:	
Z Location:	
Fiber Count:	
Is Fiber within above Conduit?:	
Splice Points:	
<b>ASSET REQUEST CONFIRMATION</b> (completed by the Licensee):	
Date:	
<b>Signature:</b>	

<b>ASSET USE AUTHORIZATION (LICENSE)</b> (completed by the Licensor):	
Party:	
Date:	
Contact Person:	
Phone:	EMAIL:
<input type="checkbox"/> <b>License Granted</b> <input type="checkbox"/> <b>License Denied</b> (check one)	
If Granted, Approximate Availability Date:	

(Licensor to attach a drawing to this AEF of the License, including access and splice points.)	
Licensor Signature:	
Printed Name:	
Title:	
Date:	
<b>NOTICE OF ASSET AVAILABILITY</b> (completed by the Licensor):	
Date of Asset Availability:	
Licensor Signature:	
Printed Name:	
Title:	
Date:	



**EXHIBIT B**

**TO BE AGREED UPON BY THE PARTIES. FORM MAY INCLUDE:**

City shall coordinate all activity on a Licensed Asset with Zayo's Network Control and Management at \_\_\_\_\_.

Zayo shall coordinate all activity on a Licensed Asset with City's Network Operations Center at 1-800-\_\_\_\_-\_\_\_\_\_.

<b>Originator:</b>	<b>Phone #:</b>	<b>Date Originated:</b>	
<b>Responsible Party:</b>	<b>Phone #:</b>	<b>Cell/Pager#:</b>	
<b>Additional Vendor Contact Info:</b>		<b>Phone:</b>	
Maintenance Spans affected:			
<b>Job Locations:</b>		<b>City:</b>	<b>State:</b>
<b>Brief Job Description:</b>			

\*\*\*\*\*ACTIVITY CLASSIFICATION\*\*\*\*\*

<b>Date requested:</b>	<b>Time:</b>	<b>Expected Duration of Activity:</b>
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\*\*\*\*\*APPROVALS\*\*\*\*\*

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# Tukwila City Council Transportation & Infrastructure Committee – 2020 Work Plan

<b>Cynthia Delostrinos Johnson, Chair; Verna Seal, Kate Kruller</b>				
	<b>Description</b>	<b>Qtr</b>	<b>Action or Briefing</b>	<b>Status</b>
<b>Transportation</b>				
<b>1.</b>	<b>42nd Avenue South Phase III/Gilliam Creek Culvert</b>			
	Project Closeout	1	A	Finishing up punch list items.
<b>2.</b>	<b>53rd Avenue S (S 137th – S 144th St) &amp; Water/Sewer/SSWM</b>			
	Project Closeout	2	A	Working on punch list and physical completion will follow.
<b>3.</b>	<b>Neighborhood Traffic Calming Program/Residential Safety</b>			
	Various activities/updates	As needed	B	On hold due to COVID impacts, 53rd Ave S traffic revisions completed with PD enforcement ongoing.
	Consultant Agreement for On-Call Engineering	1	A	Complete
<b>4.</b>	<b>Residential Streets Grant Applications</b>			
	<ul style="list-style-type: none"> <li>• 46th Ave S Safe Routes to School</li> <li>• Macadam Rd. South Complete Street</li> <li>• S. 152nd St Safe Routes to School</li> </ul>	As needed	A	S 152nd SRTS grant with Sound Transit approved by Council 10/19/20
<b>5.</b>	<b>TIB Rechannelization</b>			
	Final Report with alternative options	2	B	Briefing complete 4/6
<b>6.</b>	<b>Annual Overlay and Repair Program</b>			
	2019 Project Closeout	1	A	Complete
	Options for 2020	1	B	Complete
	Bid Award for 2020 Project	2	A	Complete
	2021 Design Contract	4	A	
	Pavement Analysis Report	4	A	Complete
<b>7.</b>	<b>Annual Bridge Inspections and Repairs</b>			
	Annual contract		A	
<b>8.</b>	<b>West Valley Hwy (I-405-Strander)</b>			
	Project Update/Supplemental Agreement	3	A	Complete
	Bid Award	4	A	
<b>9.</b>	<b>Boeing Access Road over Airport Way Seismic Retrofit</b>			



## Tukwila City Council Transportation & Infrastructure Committee – 2020 Work Plan

	Construction Management Amendment #2	2	A	Complete
	Bid Award	2	A	Complete
<b>10.</b>	<b>TUC Ped/Bike Bridge</b>			
	Project Closeout	1	A	Complete
<b>11.</b>	<b>42<sup>nd</sup> Ave S Bridge Replacement</b>			
	Direction on next steps	1	A	Complete (proceed with inspection/initial design)
	Temporary Closure Update	2	B	Complete
	Inspection Report	3	B	Complete
	Design Contract	3	A	On hold with Full Council
<b>13.</b>	<b>Transportation Element of the Comp Plan/Walk &amp; Roll</b>			
	Consultant Agreement	3	A	
<b>14.</b>	<b>BNSF Access</b>			
	Preferred alternative	1	B	
<b>15.</b>	<b>S. 196<sup>th</sup>-S. 200<sup>th</sup> St Bridge Repair Project</b>			
	Completion	1	A	Complete
	Interlocal Agreement with City of Kent for shared ownership	2	A	Complete
<b>16.</b>	<b>OTHER</b>			
	Grant Applications and Acceptances	1-4	A	Ongoing
	Transportation Demand Management Programs Updates & Grants	1-4	A,B	Ongoing
	Transportation Improvement Program Resolution	2	A	Complete
	Surplus Equipment Resolution - Fleet	2	A	Complete
	Legislation: Concurrency Management Update	3	A	Complete
	Traffic Impact Fees Update (Bi-annual)	4	A	Concurrency completed
	2021-2022 Budget Components: Residential Street, Arterial Street, Public Works Dept., Fleet, Debt Service Funds, PW Shops Fund, Street Dept.			Budget components through full Council Work Sessions this year.



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<b>Utilities</b>				
<b>1.</b>	<b>58<sup>th</sup> Avenue South Water Main Replacement</b>			
	Bid Award		A	TBD
<b>2.</b>	<b>Macadam Rd S Water Upgrade</b>			
	Bid Award		A	TBD – grant dependent
<b>3.</b>	<b>CBD Sanitary Sewer Rehabilitation</b>			
	Design 2020		A	Complete
	2020 Bid Award	3	A	Complete
	2020 Strander Repair	3	A	Complete
<b>4.</b>	<b>Water &amp; Sewer Comprehensive Plans</b>			
<b>5.</b>	<b>Fort Dent Park BNSF Sewer Relocation</b>			
	Bid Award		A	TBD
	Project Closeout		A	TBD
<b>6.</b>	<b>GIS Inventory of Water/Sewer/SWM System</b>			
	Consultant Agreement	2	A	TBD
<b>7.</b>	<b>Annual Small Drainage Program</b>			
	Closeout 2018	2	A	Complete
	Closeout 2019	3	A	Complete
	2020 Project List Review/ Design Contract	1	A	Complete
	Bid Award 2020	2	A	
<b>8.</b>	<b>Tukwila 205 Levee Certification</b>			
	Status Update	2	B	
<b>9.</b>	<b>Stormwater Quality Retrofit Project Updates and grants</b>			
	Grant Application	3	A	
<b>10.</b>	<b>East Marginal Wy S Stormwater Outfalls</b>			
	Bid Award	4	A	Complete
<b>11.</b>	<b>Chinook Wind</b>			
	Consultant Agreement	3	A	
<b>12.</b>	<b>Gilliam Creek Fish Barrier Removal</b>			
	Grant Application	2-3	A	Complete
<b>13.</b>	<b>Riverton Creek Flapgate Removal</b>			
	Bid Award	2	A	Complete



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<b>14.</b>	<b>Nelson Side Channel</b>			
	Grant Application	1	A	Complete
<b>15.</b>	<b>S. 131<sup>st</sup> Place Drainage Improvements</b>			
	Consultant Agreement	2	A	
	Grant application to FCD	3	A	Complete
<b>16.</b>	<b>Other</b>			
	Resolution for Water, Sewer, Surface Water Utility Rates 2021-2022			At Council for 2021 Budget
	2021-2022 Enterprise Fund Budget Components	4	A	Completed at Budget Workshop
	Metropolitan Water Pollution Abatement Advisory Committee contract			Public comment from 11/25/19 Council meeting
	Flood prevention and utility infrastructure; Legislation to update Flood Plain Management	1, 3	A	Complete
	Franchise utility agreements and approvals (SCL, Century Link, Comcast, Cascade Water, Sewer district)			As needed
	Sewer services in Duwamish neighborhood	1	B	Hand out/discussion on 2/3
	Tukwila Community Center Phase 3 – Siding repairs	3	A	Complete
<b>15.</b>	<b>Standard Reports/Briefings</b>	<b>Frequency</b>	<b>Dept.</b>	
	Facility Tours	As needed	PW	
	SCATBD	Monthly	CM Hougardy/Laur el	Now reported at full Council
	Committee Work Plan	2-4X	Council, Staff	
	Waste Management Update	Annual	PW	Complete 8/17/20
	NPDES	Annual	PW	

<b>Public Works Facilities</b>				
16.	Monthly Update	1-4	B	Ongoing
17.	SCL Temporary Construction Permit	1	A	Complete
18.	Consultant Agreement – Geotechnical Engineering Soil Exploration	1	A	Complete
19.	Minkler Interim Improvements	4	B	Complete